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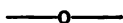
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INDEX TO VOL. XX., FOURTH SERIES, 1894-95.

	<i>Page</i>
BAR ASSOCIATIONS, THE ENGLISH AND AMERICAN ...	225
BOOKS RECEIVED	259
CARMICHAEL, THE LATE MR. C. H. E.	193
CURRENT NOTES ON INTERNATIONAL LAW. By JOHN M.	
GOVER, LL.D. 88, 173, 239	329
<i>Governments de Facto and de Jure</i>	88
<i>Foreign Wills</i>	89
<i>Lex Loci Contractus</i>	90
<i>The Declaration of Paris</i>	173
<i>Extradition Treaties</i>	173
<i>International Arbitration</i>	173
<i>Foreign Wills and Administrations</i>	174
<i>Foreign Judgments</i>	175
<i>Ownership of Moveables</i>	176
<i>Bankruptcy</i>	177
<i>International Copyright</i>	177
<i>Foreign Immoveables.</i> 177,	245
<i>Intervention</i>	239
<i>Arbitration</i>	244
<i>Domicile</i>	244
<i>Other Cases</i>	246
<i>China and Japan</i>	326
<i>North Pacific Seal Fisheries</i>	328
<i>Divorce Jurisdiction</i>	329
DIVORCED PERSONS, DR. TRISTRAM ON REMARRIAGE OF.	
By NEMO	314
ENGLISH LAW, AN ARTISTIC FORM FOR THE. By W. P.	
PAIN... ..	323
EXTRATERRITORIALITY, AND THE JURIDICAL POSITION IN ENGLAND OF FOREIGN SOVEREIGNS AND AMBASSADORS. By	
W. F. CRAIES	43
FOREIGN MARITIME LAWS: — IV. SCANDINAVIA. V.	
PORTUGAL. By F. W. RAIKES, LL.D., Q.C.	165, 206, 296

	<i>Page</i>
INDIA, HIGH COURTS AND THE COLLECTOR-MAGISTRATES IN. By JOHN DACOSTA	27
INDIA, AS IT IS, AND AS IT MIGHT BE. By Right Hon. SIR RICHARD GARTH, M.A., Q.C., late Chief Justice of Bengal	101
INDIA, THE GOVERNMENT OF, AND ITS REFORM THROUGH PARLIAMENTARY INSTITUTIONS. By JOHN DACOSTA ...	115
INDIAN GOVERNMENT, THE WARS AND THE FINANCES OF THE. By JOHN DACOSTA... ..	213
LATIN MAXIMS IN ENGLISH LAW. By JOHN WILLIAMS, D.C.L.	283
MATRIMONIAL CAUSES ACTS, THE, AND ACCESS TO CHILDREN BY DIVORCED PARENTS. By C. B.	136
NOTES ON RECENT CASES (ENGLISH). By T. F. UTTLEY, Solicitor	178, 247, 333
<i>Analysis under the Margarine Act</i>	178
<i>Drains and Sewers</i>	176
<i>Common Law Trade Marks</i>	180
<i>Excess Fares on Tramways</i>	181
<i>The Law Courts and Rival Commercial Productions</i> ...	247
<i>Income Tax and Debentures Issue Expenses</i>	249
<i>Liabilities of Directors and Auditors</i>	250
<i>The Factory Acts and Dangerous Machinery</i>	251
<i>Penalties under the Margarine Act</i>	252
<i>Tenants' Covenants, and Annoyances by Music and Singing</i>	333
<i>One Man Companies</i>	335
<i>Clerks and Dissolution of Partnership</i>	336
<i>Outgoing Partners and Creditors</i>	338
OBITER DICTA	253, 277
<i>Judicature Act and Diminution of Causes</i>	253
<i>Foreign Pauper Lunatics in England</i>	254
<i>Remarriage of Divorced Persons</i>	254
<i>Board of Trade and Water Companies</i>	255
<i>Examiners and Scholarships</i>	256
<i>Finances of Costa Rica</i>	257
<i>Sir W. Vernon Harcourt and the Finance Act, 1894</i> ...	277
<i>The New Parliament</i>	277
<i>Sylvan Debating Club</i>	277
<i>The New Peers</i>	278

	Page
<i>Bimetallism</i>	278
<i>Unnecessary Noise</i>	278
<i>The M., S. & L. Railway Co.</i>	279
<i>Wilch Finding</i>	279
<i>Meux v. Great Eastern Railway Co.</i>	279
<i>Acton v. Castle Mail Packets Co.</i>	280
<i>Change of Surname</i>	280
<i>The Wife's Notchell</i>	280
<i>What is a Speculum</i>	281
QUARTERLY NOTES	90, 183
<i>The New System of Local Government</i>	90
<i>International Arbitration</i>	93
<i>The Dutch Government and Mahommedan Law in the Dutch East Indies</i>	183
<i>A British Society of Comparative Legislation</i>	185
REVIEWS	95, 188, 261, 340
WESTLAKE, <i>Chapters on the Principles of International Law</i> ...	95
WILLIAMS, <i>Education. A Manual of Practical Law</i> ...	97
CRIPPS-DAY, <i>Adulteration (Agricultural Fertilisers, &c.)</i> ...	99
WAUWERMANS, <i>Le Droit des Auteurs en Belgique</i> ...	188
<i>The Imperial Institute Journal</i>	189
HERBERT, <i>History of Prescription in English Law</i> ...	190
OSWALD, <i>Contempt of Court</i>	261
CASTLE, <i>Law and Practice of Rating</i>	262
BOYLE AND HUMPHREYS-DAVIES, <i>Principles of Rating Practically Considered</i>	262
MAYNE'S <i>Treatise on Damages</i>	266
RINGWOOD, <i>Outlines of the Law of Torts</i>	267
INDERMAUR, <i>Manual of the Principles of Equity</i>	268
INDERMAUR AND THWAITES, <i>Student's Guide to the Principles of the Common Law. Student's Guide to the Principles of Equity. Student's Guide to Procedure and Evidence. Student's Guide to Constitutional Law and Legal History. Test Questions on various Works</i> ...	269
HUKM CHAND, <i>Treatise on the Law of Res Judicata</i> ...	270
FOWKE, <i>Reminders on Company Law</i>	271
WILLIAMS, <i>Briefless Ballads and Legal Lyrics</i>	272
CHAMIER, <i>Manual of Roman Law</i>	272
LORIMER, <i>Handbook of the Law of Scotland</i>	273
WILSON, <i>Anglo-Muhammadan Law</i>	274
GRIFFITH, <i>Indian Law of Insolvency</i>	274

	<i>Page</i>
MACPHERSON, <i>British Enactments in Native States</i> ...	275
GREENIDGE, <i>Infamia</i>	340
CHITTY, <i>Voet's Titles</i>	341
CAETANI, <i>I Mississippiani</i>	342
<i>New York University Law Review</i>	343
BORGMEYER, <i>The American Corporation</i>	344
FINCH, <i>The Insurance Agent</i>	344
FINCH, <i>Insurance Cases for 1894</i>	344
MORRIS, <i>Land and Mortgage Registration</i>	346
FORTESCUE-BRICKDALE, <i>Notes on Land Transfer</i>	346
KERR, <i>Inebriety or Narcomania</i>	346
LUFF, <i>Text-Book on Forensic Medicine and Toxicology</i>	347
FRAZER, <i>Study of Documents</i>	348
TODD, <i>Parliamentary Government in the British Colonies</i>	348
PARKER, <i>The Parish Councillor</i>	349
STEVENS, <i>Constitution of the United States</i>	350
BORGEAU, <i>Constitutions in Europe and America</i>	350
ROSCOE'S <i>Law of Light</i>	352
EMMET, <i>Notes on Perusing Titles</i>	352
LE COMTE DE FRANQUEVILLE, <i>Le Système Judiciaire de</i> <i>La Grande Bretagne</i>	353
RINGWOOD, <i>Principles of Bankruptcy</i>	356
WALKER, <i>Public International Law</i>	357
BROWN, <i>Summary Criminal Jurisdiction</i>	358
PERIODICALS	276, 358
RICARDUS ANGLICUS, AND THE THIRTEENTH CENTURY, THE AGE OF SCIENTIFIC LAW AMENDMENT. By SIR TRAVERS TWISS, D.C.L., Q.C.	1
ROMAN LAW, EVIDENCE IN, THE FUNCTION OF. By JAMES WILLIAMS, D.C.L.	73
SALTASH, THE WATER COURT OF. By SIR SHERSTON BAKER, Bart., Barrister-at-Law... ..	195
STATE LABORATORIES, AND THE FOOD PRODUCTS (ADUL- TERATION) COMMITTEE. By F. H. CRIPPS-DAY, M.A., Barrister-at-Law	144
SELBORNE, MEMOIR OF THE LATE LORD	221
QUARTERLY DIGEST OF ALL REPORTED CASES. By C. H. LOMAX, M.A., Barrister-at-Law. Vol. XX. (Nov., 1894, to Aug., 1895). . . .	1, 31, 63, 95

CONTENTS.

	—o—	
		<i>Page</i>
OBITER DICTA	... ..	277
I.—LATIN MAXIMS IN ENGLISH LAW. By JOHN WILLIAMS, D.C.L.	... ..	283
II.—FOREIGN MARITIME LAWS: IV. SCANDINAVIA. By F. W. RAIKES, LL.D., Q.C.	... ..	296
III.—DR. TRISTRAM ON REMARRIAGE OF DIVORCED PERSONS. By NEMO	... ..	314
IV.—AN ARTISTIC FORM FOR THE ENGLISH LAW.—By W. P. PAIN	... ..	323
V.—CURRENT NOTES ON INTERNATIONAL LAW. By J. M. GOVER, LL.D., Barrister- at-Law	... ..	326
<i>Public International Law :—</i>		
China and Japan	... ..	326
North Pacific Seal Fisheries	... ..	328
<i>Private International Law :—</i>		
Divorce Jurisdiction	... ..	329
VI.—NOTES ON RECENT CASES (ENGLISH). By T. F. UTTLEY, Solicitor	... ..	333
Tenants' Covenants and Annoyances by Music and Singing	... ..	333
One Man Companies	... ..	335
Clerks and Dissolution of Partnership...	... ..	336
Outgoing Partners and Creditors	... ..	338
VII.—BOOKS RECEIVED	... ..	339
VIII.—REVIEWS :—		
GREENIDGE, <i>Infamia</i>	... ..	340
CHITTY, <i>Voet's Titles</i>	... ..	341

	<i>Page</i>
CAETANI, <i>I Mississippiani</i>	342
<i>New York University Law Review</i> ...	343
BORGMEYER, <i>The American Corporation</i> ...	344
FINCH, <i>The Insurance Agent</i>	344
FINCH, <i>Insurance Cases for 1894</i>	344
MORRIS, <i>Land and Mortgage Registration</i>	346
FORTESCUE-BRICKDALE, <i>Notes on Land</i> <i>Transfer</i>	346
KERR, <i>Inebriety or Narcomania</i>	346
LUFF, <i>Text-Book on Forensic Medicine and</i> <i>Toxicology</i>	347
FRAZER, <i>Study of Documents</i>	348
TODD, <i>Parliamentary Government in the</i> <i>British Colonies</i>	348
PARKER, <i>The Parish Councillor</i>	349
STEVENS, <i>Constitution of the United States</i>	350
BORGEAU, <i>Constitutions in Europe and</i> <i>America</i>	350
ROSCOE'S <i>Law of Light</i>	352
EMMET, <i>Notes on Perusing Titles</i> ...	352
LE COMTE DE FRANQUEVILLE, <i>Le Système</i> <i>Judiciaire de La Grande Bretagne</i> ...	353
RINGWOOD, <i>Principles of Bankruptcy</i> ...	356
WALKER, <i>Public International Law</i> ...	357
BROWN, <i>Summary Criminal Jurisdiction</i>	358
IX.—Quarterly Digest OF ALL REPORTED CASES	
IN THE <i>Law Reports, Law Journal Reports,</i>	
for May, June, and July, 1895, <i>Law Times</i>	
and <i>Weekly Reporter</i> , for May and June,	
1895. By C. H. LOMAX, M.A., Barrister-	
at-Law	95
INDEX OF CASES	i.
TITLE AND INDEX TO VOL. XX., 4th Series,	
<i>Law Magazine and Review.</i>	

THE LAW MAGAZINE AND REVIEW.

No. CCXCIV.—NOVEMBER, 1894.

I.—RICARDUS ANGLICUS, AND THE THIRTEENTH CENTURY, THE AGE OF SCIENTIFIC LAW AMENDMENT.

MY previous review of the distinguished career of Magister Ricardus Anglicus, as the Pioneer of the Study of Scientific Judicial Procedure in the Twelfth Century, had two objects principally in view. I was desirous in the first place, after my discovery of a MS. of his long missing Treatise on Judicial Procedure amongst the unexplored treasures of the Royal Library at Brussels, to revive generally the knowledge of an almost forgotten fact, that England in the person of Magister Ricardus took the lead of Europe in the Twelfth Century in re-organising the scientific study of Judicial Procedure in the Law School of Bologna, that study having been generally neglected in Europe during the dark ages that followed the dissolution of the Roman Empire of the West. My second object was to bring to the attention of my English readers, what I may term a domestic fact, namely, that the *Ordo Judiciarius* of Magister Ricardus furnished evidence that the development of Scientific Jurisprudence in England before the days of Bracton was not the exclusive work of Anglo-Norman Jurists, but was a work, in which a leading part was taken by an Englishman, whose fame as a *Magister Decretorum* is still preserved in the most illustrious Law School of Mediæval Europe, whilst

contemporary English Chroniclers commemorate him as having ruled successively the three Dioceses of Chichester, Salisbury, and Durham, with consummate prudence and with the greatest benefit to the Church in each Diocese.

I have found, however, since I drew up that review, that I have not done full justice to Magister Ricardus, as I have omitted to notice certain events in his early English career, which occurred very shortly after his election to the Deanery of Sarum, in England, in 1198, had caused him to sever his active connection with the Law School of Bologna, as a *Magister Decretorum*. Yet the circumstances attending those events are of the highest historical interest, whilst their juridical character has been but imperfectly appreciated by the contemporary English Chroniclers, whose writings have come down to our time. Happily, however, there are archives still preserved in other countries, the contents of which reflect light on many dark spots in the ignominious reign of King John of England, and as I have in my previous review found it useful to appeal to the Papal Registers* with a view to correct certain erroneous conclusions on the part of one of the most distinguished of living German Canonists, Professor von Schulte, of the University of Bonn,† as to the period at which Magister Ricardus terminated his connection with the Law School of Bologna as a *Magister Decretorum*, so I have found it advantageous to consult some Canon Law books of the Thirteenth Century, which contain a record of certain legal proceedings in the Roman Curia, in which Magister Ricardus was a party shortly after his return to England, and of which no English chronicle,

* *Regesta Pontificum Romanorum ab anno post Christum natum MCXCVIII. ad annum MCCCIV.*, edidit AUG. POTTHAST. Berolini, 1873.

† *Die Geschichte der Quellen und Literatur des Canonischen Rechts von Gratian auf die Gegenwart*, von Dr. JOHANN FRIEDERICH VON SCHULTE. Stuttgart. 1875. Erster Band, p. 183.

as far as I am aware, supplies any complete account. Those proceedings, however, were the commencement of the relations between King John of England and Pope Innocent III., in the course of which King John sought to use the Pontiff as an ally in his feeble game for the recovery of his lost Continental possessions from King Philip II. of France, whilst the masterful genius of that able and energetic Pontiff so moulded those relations, as to constrain the pusillanimous son of the great Henry II. to acknowledge himself to hold the Kingdom of England as a fief of the Apostolic See, and to do homage to the Pontiff as his vassal.

The earliest of these Canon Law books, to which I should have wished to refer my readers, is the collection of Decretals of Pope Innocent III., compiled by Peter of Beneventum, the Pope's notary,* a copy of which the Pope caused to be transmitted to the "Masters and Scholars commorant at Bologna." As, however, a Print of those Decretals may not be readily accessible to English readers, my purpose will be equally well served, if I refer them to the important collection of Pontifical Decretals compiled under the authority of Pope Gregory IX., and which are printed in the *Corpus Juris Canonici*, edited by Peter Pithæus and his brother Francis at Paris in the year 1687. I quote this edition, as I have it before me at the present time, and it has been pronounced by competent Judges to be the best edition of the body of the Canon Law.†

* This work has been printed in the *Antiquæ Collectiones Decretalium*, Paris, 1621, folio, p. 226. It is frequently described as *Compilatio Tertia*, and is referred to under that name in the margin of Chapter XXV. of the Decretals of Pope Gregory IX. Two MSS. of the *Compilatio Tertia* are preserved in the Public Library of Douai, in France.

† *Corpus Juris Canonici Gregorii XIII., Pont. Max., jussu Editum a Petro Pithæo et Francisco fratre, Jurisconsultis, ad veteres Codices Manuscriptos restitutum. Parisiis. MDCLXXXVII.*

It appears, then, from an interlocutory Decree of Pope Innocent III., which is recorded in the collection of Decretals of Pope Gregory IX.,* that on a vacancy having occurred in the See of Winchester in England, A.D. 1204, the Archdeacon of Winchester and certain members of the Chapter voted for Magister Ricardus Anglicus, who is described in that Decretal simply by his official title of Dean of Salisbury (*Decanus Sarisberiensis*), whilst the Prior of Winchester and certain other members of the Chapter voted for the Precentor of Lincoln; and as the parties could not come to an agreement, they appealed the election to Pope Innocent III. Further, it would appear that the Prior and his party, when they came before the Pontiff, objected to the election of Magister Ricardus as being a person *non legitime natus*, and, as such, disqualified for the Episcopal office under a Decree of the Lateran Council of A.D. 1179; and they further alleged that the supporters of Ricardus, having knowingly voted for an unfit candidate, had, under the same Decree, forfeited their right of voting in the ensuing election to be held before the Pontiff. On the other hand, the Archdeacon and his party submitted to the Pontiff that, although Ricardus might be *minus legitime natus*, he deserved to be legitimated through the favour of the Apostolic See, and they were prepared to prove him to be worthy of that favour. The Pontiff seems thereupon to have overruled the objection of the Prior and his party, on the ground that, as there had been already two elections, and they had neglected to urge their canonical objection at the second election, as directed by the Decree of the Lateran Council, the Archdeacon and his party were not precluded from bringing forward Magister Ricardus, as their candidate, on the occasion of a third election, to be held before the Supreme Pontiff himself. The Pope's

* *Decretal. Gregorii IX.* Lib. I., Tit. vi., c. xxv.

interlocutory Decree to that effect concludes the twenty-fifth Chapter of the Sixth Title of the First Book of Pope Gregory's Collection of Decretals.*

After perusing this interlocutory Decree of Pope Innocent III., we might with reason expect to find in the pages of some contemporary English Chronicler a brief notice of a definitive sentence pronounced by the same Pontiff in favour of Magister Ricardus, and of his subsequent consecration at Saint Peter's in Rome in like manner as we read in the *Ymagines Historiarum* of Master Ralph de Diceto,† Dean of St. Paul's, under the year 1200, an account of the consecration at St. Peter's of Magister Malgredius, after he had sought and obtained from Pope Innocent III. the confirmation of his election to the Bishopric of Worcester in England, notwithstanding that he laboured under the same canonical disqualification for the Episcopal Office as Magister Ricardus, "*cum non esset de legitimo matrimonio natus.*"‡ Instead, however, of that expectation being fulfilled, we read in the *Historia Minor*, better known as *Historia Anglorum*, of Matthew Paris, a monk of the Abbey of St. Albans, who was promoted to the office of Historiographer of the Abbey after the death of Roger de Wendover, A.D. 1236, a concise notice under the year 1204, of the death of Godfrey, Bishop

* *Nos igitur attendentes, quod isti post primam electionem admiserant illos ad celebrandam secundam, et quod, decretum memorati Concilii decrevit huiusmodi præsumptores una vice dumtaxat eligendi potestate privatos, quoniam Electio, quam coram nobis celebrare volebant, non jam secunda, sed tertia concurrebat ad eligendum illos censuimus admittendos.* Lib. I., Tit. vi., c. xxv.

† *Radulfi de Diceto, Decani Londoniensis, Opera Historica*, edited for the Master of the Rolls by Professor W. Stubbs, now Lord Bishop of Oxford. [Lond., 1876.] Vol. II., p. 168.

‡ Prohibitions of marriage between persons of different nationality "*Connubia inter alienigenas prohibita,*" are specified by Isidore of Seville, writing early in the Seventh Century, amongst the subjects of the *Jus Gentium*. The Goths on their conquest of Spain prohibited all such marriages, and their offspring were illegitimate.

of Winchester “*cui successit Petrus* de Rupibus per Regem Johannem promotus.*” Other Chroniclers agree with the monk of Saint Albans in attributing the promotion of Peter des Roches (Petrus de Rupibus) on this occasion to the intervention of King John, whilst several modern historians represent the consecration of the Poitevin priest to one of the most important Bishoprics in England as having been a high-handed act on the part of Pope Innocent III. To which story are we to give credit? And are we justified in regarding the promotion of Peter des Roches on this occasion in the light in which it has been represented by the majority of modern historians, namely, as the inauguration of a novel claim of Judicial authority on the part of the Pontiff and an encroachment on the sovereignty of the Kings of England?

It were much to be desired that some master of Antiquarian lore should satisfactorily determine the authorship of that portion of the *Flores Historiarum*, which embraces the reign of King John. The work itself has lately been edited by Dr. Luard, the learned Registrary of the University of Cambridge, as part of the Rolls Series.† The late Sir Frederic Madden, whom the author of this Article had the privilege to know personally many years ago, when he was Keeper of the Department of the MSS. in the British Museum, has made some valuable comments on the *Flores Historiarum* in his Preface to the *Historia Anglorum*, which he edited for the Master of the Rolls, in 1869. As some readers of the present pages may not be familiar with the *Flores Historiarum*, I

* *Matthæi Parisiensis, Monachi Sancti Albani, Historia Anglorum.* Rolls Series. [Ed. by Sir Frederic Madden, K.H. Lond., 1866-9.] Vol. II., p. 102.

† *Flores Historiarum*, edited by Henry Richards Luard, D.D., Registrary of the University of Cambridge. Rolls Series. London. 1890. Dr. Luard, I regret to say, died in 1891, almost before he could have learned how highly his labours were appreciated by the searchers after historical truth.

may mention that it is an anonymous chronicle, or rather a series of anonymous chronicles, of which the authorship was, in Archbishop Parker's time, attributed to a certain Matthew of Westminster, and of which Archbishop Parker caused three consecutive editions to be published in the years 1567, 1570, and 1571. A more perfect MS. of the *Flores*, known as the Chetham MS.,* having been discovered since Archbishop Parker's time, Sir Frederic Madden, after a careful examination of that MS., pronounced a well-reasoned opinion that Matthew of Westminster is a mythical personage, and that the earlier part of the *Flores*, which includes the reign of King John, was written at St. Albans under the eye and by the direction of Matthew Paris himself, as an abridgment of his *Chronica Majora*. Dr. Luard, on the other hand, agrees so far with Sir Frederic, that he holds the earlier portion of the Chetham MS., down to the year 1265, to have been written at St. Albans, but not to have been written by Matthew Paris himself. The passage which I am about to quote is rather confirmative of Dr. Luard's view, as Matthew Paris was very careful to avoid mention in his writings of facts that might cause offence in high quarters, and I extract it from Dr. Luard's text, which is founded on the Chetham MS. It occurs in Vol. II., p. 129, of the Rolls Edition.

* The Chetham Manuscript is considered by Dr. Luard to be the earliest MS. existing of the *Flores Historiarum*. It is preserved in the Chetham Library at Manchester, No. 6,712. It was given to the Chetham Library in 1657 by Nicholas Higginbotham, of Stockport, after having been at one time the property of the Church of Saint Peter's, Westminster, as the words *Liber Ecclesiæ beati Petri Westmonasterii* have been written in several places on the margin of the MS. There can be little doubt that Matthew of Westminster was the name of a book or manuscript, which it acquired after the manuscript had become the property of the monks of Westminster Abbey. Sir Thomas Hardy, however, is not inclined to give up the personality of Matthew of Westminster. See his *Descriptive Catalogue of Materials for British History*, Rolls Series, Vol. III., p. 313. [Lond., 1862-71.] He relies on the MS. known as the Norwich MS., now in the British Museum, Cotton, Claudius, E. VIII.

Having described some atmospherical phenomena which were seen in the heavens (*in caelo*) during the night of the Kalends of April, 1204, the author of the *Flores* goes on to say:—"Eodem tempore, Godefridus Wintoniensis Episcopus diem clausit extremum, cui successit Petrus de Rupibus." So far it will be seen that the text of the *Flores* accords with that of the *Historia Anglorum* of Matthew Paris, as already quoted by me, but instead of the continuation of the text of the *Flores* likewise according with that of the Monk of St. Albans, who briefly adds the words—"per regem J[ohannem] promotus," the text of the *Flores* will probably cause some surprise to the reader, as it caused surprise to the author of this Article, when he first read it.

It proceeds thus: "*Qui, procurante rege Johanne, Romam profectus est, ubi exenniis liberaliter collatis, ad summam Wintoniensis ecclesiæ meruit provehi sacerdotium, et ibidem consecrari.*"

It may be assumed, in spite of some uncertainty as to who may have been the author of that portion of the *Flores Historiarum*, which comprises the reign of King John, that there is a *consensus* amongst learned men who have carefully studied the subject, that it was drawn up within the precincts of the famous Abbey of St. Albans, and that if it was not actually compiled by the Historiographer of the Abbey, it was compiled by some one well known to him, and who was in constant communication with him. That being so, it may be presumed that the author of the paragraph above quoted, namely, that "Peter des Roches ensured the success of his suit in the Roman Curia by a liberal distribution of presents amongst its members," must have satisfied himself of the truth of the story before he admitted it into his narrative. That the Papal Court had become most venal was admitted shortly afterwards by Master Otto, the Nuncio of Pope Honorius III., who, in the Council of Westminster, in 1226, demanded that two Prebends in every

Cathedral and in every Abbey should be placed at the disposal of the Apostolic See, in order that the Pontiff might put an end to the great scandal: "*Quod nullus potest aliquod negotium in Romana Curia expedire, nisi effusa magna summa pecunie et donorum exhibitione.*"*

It will be convenient to follow a little further the text of the *Flores*, as the author informs us, under the next following year, 1205, that Peter de Rupibus was consecrated to the Bishopric of Winchester on the seventh day of the Kalends of October in that year, and that he forthwith returned to England. No mention, however, is made in the *Flores* of the appeal of the Chapter of Winchester, and we are at first at a loss to reconcile the act of the Pontiff in consecrating Peter des Roches with his previous decision, as recorded in the Decretals of Gregory IX., as to the admissibility of the plea of the Archdeacon of Winchester in favour of the election of the Dean of Salisbury, Ricardus Anglicus. The same collection, however, of the Pontifical Decretals, which contains the interlocutory Decree of the Pontiff as to the admissibility of the Archdeacon's plea, comes to our assistance on this occasion, and enables us to understand how the Pontiff had no juridical difficulty in disembarassing his Court of the Archdeacon's suit, and thereby setting himself free to accede to the request of King John. The chapter which assists us is the twentieth chapter of the Sixth Title of the First Book of the Decretals of Pope Gregory IX., which contains a letter from Pope Innocent III. to the Archbishop of Canterbury, dated from Rome in 1199.†

It is not too much to say of this letter that it is of great Juridical interest, as it contains an authoritative exposition

* *Flores Historiarum*, Vol. II., p. 184.

† The Archi-episcopal See of Canterbury was at this time filled by Hubert FitzWalter, the nephew and pupil of Ranulf de Glanville, the great Justiciar of King Henry II., who, on his return from the Holy Land, succeeded his uncle as Justiciar.

of the Canon Law on certain subjects which may be described as being "*inter apices juris Ecclesiastici*." It was written on the occasion of the election of Magister Malgredius to the Bishopric of Worcester, which has been already briefly noticed in the *Ymagines Historiarum* of Master Ralph de Diceto,* Dean of St. Paul's, under the year 1200. It may be mentioned that Magister Malgredius is described in the Pontiff's Letter as Archdeacon of York, whilst he is described by the Dean of St. Paul's as the Physician of King Richard, the deceased brother of King John.

It would appear from the Pontiff's Letter to the Archbishop of Canterbury that Magister Malgredius, who was a man universally esteemed for his learning and his piety, having been unanimously elected in his absence and without his knowledge by the Chapter of Worcester to the vacant Bishopric of Worcester, and having been approved by the King, had scruples of conscience as to the acceptance of his promotion to the Pastoral office by reason of his illegitimacy, the fact of which was a secret confined to his own heart.

He thought it right, however, to disclose to the Archbishop, whose confirmation of his election he was in duty bound to seek, the fact of his Canonical disqualification, and thereupon the Chapter of Worcester thought it proper for him to proceed to Rome and to seek the confirmation of his election at the hands of Pope Innocent III. It was after the arrival of Magister Malgredius in Rome and his appearance before the Roman Curia, that the Pontiff addressed his letter to the Archbishop of Canterbury, which he commences by narrating the proceedings which had been instituted in the Roman Curia, and by asserting his own personal authority to dispense with the Canon of the Lateran Council, which

* *Radulfi de Diceto, Decani Londoniensis, Opera Historica.* Rolls Series. [Lond., 1876.] Vol. II., p. 169.

declares the election of an illegitimate person to the Pastoral Office to be null and void. He goes on to say that Pope Alexander III., who had promulgated (*edidit*) that Canon, had no intention to prohibit his successors from dispensing with it, nor, in fact, had he any authority over his successors, who were his equals. Nevertheless, the Chapter of Worcester had missed their way in improvidently electing Magister Malgredius in disregard of the Canon, instead of postulating the Pontiff's permission to elect him. The Pontiff accordingly quashed the election, but he informed the Archbishop that he was prepared to allow the Chapter of Worcester to proceed *de novo* by way of postulation, if they were so minded.*

The Pontiff's letter stops here, and we learn by inference from Ralph de Diceto's *Ymagines Historiarum* and other chronicles,† that the Chapter of Worcester proceeded *de novo* in the manner indicated by the Pontiff to the Archbishop, and that the Bishop was ultimately consecrated by the Pontiff himself at Saint Peter's in Rome.

It is obvious, that, in accordance with this precedent, Pope Innocent III. would find himself juridically at liberty to set aside the election of Magister Ricardus after hearing the plea of the Archdeacon of Winchester, and would also be free to listen to the request of King John, more particularly as the King's candidate presented himself

* The text of the Pope's letter is as follows: "*Nobis tamen per eum adempta non fuit dispensandi facultas, cum ea non fuerit prohibentis intentio, qui successoribus suis nullum potuit in hac parte prejudicium generare, pari post eum, imo eadem potestate facturis, cum non habeat imperium par in parem.*" *Decretal. Gregor. IX.*, L. I., Tit. vi., c. xx.

† Roger de Hoveden writes: "*Eodem anno (sc. 1198), Ricardus Rex Angliæ dedit Magistro Malgero clerico suo Episcopatum Wigorniensem.*" *Rolls Ed.* [Lond., 1869-71], Vol. IV., p. 78. The editor, Dr. Stubbs, then Regius Professor of Modern History in the University of Oxford, considers this entry as an interpolation. The death of King Richard probably suspended for a short time the election of Malgredius.

at the Papal Court, according to the *Flores Historiarum*, well furnished with substantial recommendations of a very welcome character, for the Papal Court was at that time in sore distress for money to meet its extraordinary expenditure. A Crusade, generally described as the Fourth Crusade, had been preached in France by Fulk, Parish Priest of Neuilly-sur-Marne, in the year 1198, which was the first year of Pope Innocent's reign, and the Crusaders having resolved to go by sea to the Holy Land, had hired vessels from the Republic of Venice, and found themselves too poor to pay for them. They accordingly encouraged the Venetians to pay themselves by plundering various cities as they sailed along the coast of the Byzantine Empire, and on the 12th April, 1204, the Crusaders took by assault the capital city of the Eastern Empire, and elected Baldwin, Count of Flanders, who was one of their leaders, Emperor of Constantinople. They further elected a new Patriarch of Constantinople, who was to be subject to the supreme authority of the Roman Pontiff, instead of being as hitherto, his rival and antagonist. Under such circumstances we cannot be surprised that King John's liberality was highly appreciated at the Court of Rome, and that it rendered for the moment the Poitevin priest a more welcome candidate than the *Magister Decretorum*, who had only recently quitted the Law School of Bologna, where he was known as Ricardus Pauper.

Pope Innocent III., as is aptly remarked by J. C. L. de Sismondi, in his *History of the Italian Republics*,* had at this very time gained a triumph over the Eastern Church, which he had not sought, but of which he knew how to take advantage. The same remark applies to his conduct as regards King John. He did not hesitate to allow the

* *History of the Italian Republics*, by J. C. L. DE SISMONDI. London: Longman, Green & Co., 1890, p. 61. Originally published in 1832.

members of his Court to accept presents from Peter des Roches, as they were thereby enabled to give increased support to the Crusaders in the East, whilst he humoured King John in his belief that the promotion of Peter des Roches to an English Bishopric would strengthen his hold over Poitou, the Barons of which county were on the point of renouncing their allegiance to King John with a view to ranging themselves under the banner of King Philip II. of France.

There was, however, some excuse for the conduct of King John. His mother, Queen Eleanor, died on 1st April, 1204. Her marriage with King Henry II. had brought Poitou with Guienne under the feudal rule of the English King, but King Philip II. of France had become master of half of Poitou before Queen Eleanor's death. She had been an influential adviser of her son since he came to the throne, and being very energetic and full of resources and at the same time not over scrupulous as to the means for attaining her ends, she had led him to adopt measures for the recovery of Poitou, which he had not sufficient nerve to carry out effectively after her death. It had been upon her advice that he had attempted to secure friends at the Pontiff's Court whilst he would have at the same time a clever Poitevin priest by his side as his adviser in Continental matters, whose fidelity he could ensure by his promotion to the Episcopal See of Winchester. Professor Stubbs has well observed in his *Constitutional History of England* that "the death of Queen Eleanor marks the collapse of King John's Continental Power, and the end of the dynastic system of the Conqueror." He further remarks most justly that the death of Archbishop Hubert FitzWalter, which took place in July, 1205, marks the termination of the Alliance between "the King and the clergy, which had been cemented by Archbishop Lanfranc, and had not been completely broken by the quarrel with

Anselm, or even by that with Becket." The result, however, of the death of the Archbishop was a violent quarrel between King John and Pope Innocent III. as to who should be the Archbishop's successor, and their quarrel exposed England to the shame and horrors of a Papal Interdict, and was only appeased by King John's surrender of his kingdom to the Pontiff, and by his receiving it back as a fief of the Apostolic See after signing a Charter of Submission to Pope Innocent III. and his successors.*

Meanwhile, we have to consider what influence the promotion of Peter des Roches exercised on the fortunes of Ricardus Anglicus. J. C. L. de Sismondi, who was no great admirer of the Sovereignty of the Popes, and I call him for that reason as a witness, while he attributes to Pope Innocent III. a high place as a worthy successor of Pope Gregory VII. (Hildebrand), expresses an opinion that he laboured for that Sovereignty with a fanaticism more religious and a pride less worldly, while all his efforts tended more to confirm the power of the Church and of Religion than his own. The Pontiff's conduct on this occasion harmonises with Sismondi's view of his character, for while the Pontiff assented to the request of King John, he did not forget the claims of the Church in the person of Ricardus Anglicus, whose merits had many features in common with those of Magister Malgredius, which the Pontiff himself has enumerated in his letter to the Archbishop of Canterbury:—" *Multa enim in hoc casu dispensationem inducere videbantur, literarum scientia, morum honestas, vitæ*

* This Charter is printed in the *Flores Historiarum*, Rolls Ed., Vol. II., p. 145. It is only found in one MS. of the *Flores*, which is preserved in the Library of the Provost and Fellows of Eton College, and was written at the Priory of Merton in the early part of the XIVth century. Dr. Luard remarks that it is a better copy than that given by Matthew Paris, and is certainly not taken from him. Dr. Luard also observes that it is from the Eton College MS. and the Chetham MS. that all the MSS. of the *Flores* existing directly or indirectly descend.

virtus, et fama personæ multipliciter a quibusdam etiam ex fratribus nostris, qui eum in scholis cognoverant, approbatæ."

The author of the *Flores* assists us further in tracing the fortunes of Ricardus at Rome in connection with the consecration of Peter de Rupibus. He informs us that Peter de Rupibus was consecrated by the Pontiff himself on the seventh of the Kalends of October, 1205, and that he returned to England forthwith. The suit, however, of the Chapter of Winchester was still on the files of the Papal Court, and we have to refer to the *Regesta Pontificum*,* quoted in my previous Article, for the formal Decree of the Pontiff disposing of that suit. It appears from the Pontifical Register Book, that the Pope made a formal decree on 21st December, 1205 (No. 2,646), to the effect that the election of Magister Ricardus was invalid from an irregularity in the mode of proceeding, and we shall be justified in regarding this Decree as the definitive sentence of the Pontiff in the suit of the Chapter of Winchester, which is recorded amongst the Decretals of Pope Gregory IX.† On the other hand, there is a further entry in the *Regesta Pontificum*, under the date of 14th January, 1206, viz., that a Pontifical Brief was issued on that day to the Dean of Salisbury (Ricardus Anglicus) dispensing with his disqualification *ob defectum natalium*. Magister Ricardus was thus relieved from any canonical disqualification for the Pastoral Office in future, but he had to bide his time, for an evil day for England and her clergy was at hand.

It has been already mentioned that Hubert Fitz-Walter, Archbishop of Canterbury, died on 12th July, 1205. There had been frequent disputes since Archbishop Lanfranc's time between the monks of Christ Church, Canterbury, and the Suffragan Bishops of the Province of Canterbury, as to

* *Regesta Pontificum Romanorum, MCXCVIII.—MCCCIV. Edidit AUG. POTTHAST. Berolini. 1873.*

† *Decretal. Gregor. IX., Lib. I., Tit. vi., c. xxv.*

their respective rights of electing to the Metropolitan See, inasmuch as the Archbishop, since Lanfranc's time, had combined in his person the office of Abbot of the Benedictine Convent of Christ Church with that of Metropolitan of the Province of Canterbury, and it was in respect of his Metropolitan Jurisdiction that the Suffragan Bishops claimed to have a voice in his election. Hubert Fitz-Walter* was the nephew and pupil of Ranulf de Glanville, the great Justiciar of King Henry II., and had assisted his uncle in drawing up his *Tractatus de Legibus et Consuetudinibus Regni Angliæ*. He was consecrated to the Bishopric of Salisbury by Archbishop Baldwin shortly before he set out for the Holy Land, and he accompanied his uncle to Acre, where his uncle died; and King Richard, having renounced his leadership of the Crusade, Bishop Hubert led back to England the survivors of the English contingent. He afterwards visited King Richard in his Austrian dungeon, and returned to England to raise money for his ransom. On his arrival in England, he found that the monks of Canterbury had already elected Reginald, Bishop of Bath, to the Archi-episcopal See, which had become vacant by the death of Archbishop Baldwin in the Holy Land. Bishop Reginald, however, had died very soon after his election, and the moment was opportune for the monks to avail themselves of the safe return of Bishop Hubert, and at once to elect him to the vacant See. King Richard had meanwhile written from his prison in Germany to the Bishop of London, as Dean of the Province of Canterbury, and to the other Suffragan Bishops of the Province, exhorting them to elect a fit person to fill the vacant Archi-episcopal See. He had also communicated with Walter, Archbishop of Rouen, who filled the office of Justiciar and was in fact Regent, and who, after a

* He is described as Hubertus Filius Walteri in the *Flores Historiarum*, whilst the other Chronicles describe him as Hubertus Walteri, and the English Historians speak of him as Hubert Walter.

consultation with Queen Eleanor and the Bishop of London, convened an Assembly of the Bishops of the Province to meet the Monks of Christ Church at Westminster, where the Monks, having in the first place elected Bishop Hubert as their Abbot,* and the Bishops in the second place having elected him as their Metropolitan, the Justiciar, as representative of the absent King, approved and confirmed the election of Bishop Hubert to the high office of Archbishop.†

In spite of so recent a precedent before them, of which the facts must have been very generally known,‡ the Junior Monks at Canterbury, immediately upon the death of Archbishop Hubert in 1205, and before his mortal remains had been committed to the earth, met secretly in the Convent and elected Reginald, their Sub-Prior, as his successor, and forthwith despatched him, in a manner equally secret, to Rome, to obtain from Pope Innocent III. the confirmation of his election. On his arrival, the Pontiff took time to consider their request, and meanwhile, the Senior Monks, with the Prior at their head, having communicated with the King, elected, upon the King's recommendation, John de Gray, Bishop of Norwich, and the King, having accompanied his candidate to Canterbury, the Monks installed John de Gray in the Archbishop's chair, and thereupon the King in person gave him full possession of all the temporalities of the Archi-episcopal See. Nothing, in fact, could have been more irregular, except the previous election by the Junior Monks. King John, in addition, sent off at once a deputation of the Senior Monks, at the head of whom was a certain Magister

* The Monks had previously elected Bishop Hubert at Canterbury.

† *Radulfi de Diceto Opera Historica*. Rolls Ed., Vol. II., p. 109.

‡ Full particulars of this ceremony may be gathered from *Radulfi de Diceto Opera Historica*. Rolls Ed., Vol. II., p. 109. The Dean was most probably an eye witness of the ceremony.

Helyas de Brandefeld, who most probably supplied the author of this part of the *Flores* with the details of the proceedings in the Roman Curia, for none but a party present in that Court could well have supplied certain particulars respecting which Helyas de Brandefeld might say with justice, *quorum pars magna fui*. The deputation had special instructions to request the Pontiff to confirm the election of John de Gray. The Suffragan Bishops of the Province of Canterbury, in like manner, had lost no time in despatching their Proctors to Rome with instructions to lodge a complaint in the Curia, on the ground that the Monks had presumed to elect an Archbishop without their presence as required by the Common Law and by ancient custom. It is probable that Magister Helyas de Brandefeld was personally known to the Historiographer of the Abbey of St. Albans, as it is stated in the same volume of the *Flores*, p. 73, under the year A.D. 1155, that Thomas, a Londoner by birth, the future Archbishop and Martyr, held the Church at Brandefeld as his earliest preferment, from the Abbey of St. Albans, before he entered the household of Archbishop Theobald. There is nothing in the text to account for the introduction of this paragraph under the year 1155 unless the writer was interested in the Church of Brandefeld.

There were thus three competing parties before the Roman Curia, two of whom had each a candidate who sought confirmation of his election, whilst the third party objected to both candidates on the ground that it had not been allowed to take part in either election. The Supreme Pontiff decided to hear the case of the Junior Monks first of all, whose right to elect an Archbishop, in the absence of the Suffragan Bishops of the Province, was denied by the Bishops, and whilst the Bishops relied on the Common Law and the practice in the elections of the last three Metropolitans immediately preceding, the Monks set up a

special privilege from the Roman Pontiffs, supported by an ancient custom. After an argument which lasted several days, and was followed by the examination of witnesses, the Pope pronounced a definitive sentence in favour of the right of the Monks to conduct their elections without the Bishops, and he confirmed their privilege *in perpetuum*. The author of the *Flores* names the twelfth day of the Kalends of January as the day on which the Pontiff pronounced his definitive sentence in what may be termed the preliminary suit between the Monks and the Bishops.

The more complicated suit had next to be determined by the Pontiff, namely, whether the election of Reginald, the Sub-Prior, by the Junior Monks should be declared a valid election, or if it were invalid for irregularity, whether the subsequent election of John de Gray, by the Senior Monks, was sufficiently regular. King John's Commissioners, who were well furnished with money, seem to have spent it lavishly, for their master afterwards complained of their waste of the money, especially as he got nothing for it. The Pontiff, meanwhile, endeavoured to bring about an agreement between the parties, but in vain, and he ultimately quashed both elections as irregular, and recommended both parties to agree in choosing an "incomparable Englishman," Master Stephen de Langton.* The Monks, however, on both sides, declared themselves to be incompetent to elect a stranger without authority from the Chapter of Canterbury, whereupon the Pontiff enjoined them, *virtute obedientiæ et sub pœna anathematis*, to obey his precept.

* The author of the *Flores* (Vol. II., p. 134), describes Stephen Langton as "*Natione Anglicum, virum profundi pectoris, elegantem corpore, moribus præelectum, aptum et sufficientem in quantum hominis est, universalem ecclesiam gubernandi.*" Matthew Paris, in his *Historia Anglorum*, Vol. II., p. 111, says: "*Quo non erat major in curia, immo nec ei par in moribus et scientia.*"

The Monks, much against their will, but having before them the fear of excommunication, at last submitted to the Pontiff's precept, and went through the form of an election, Magister Helyas de Brandefeld, whom King John had retained as special counsel* for himself and the Bishop of Norwich, protesting against the election. The Pontiff, notwithstanding, confirmed the election of Stephen de Langton, and consecrated him at Viterbo, on the fifteenth of the Kalends of July, 1207. The writer of the *Flores Historiarum* recounts these latter events, as if he had been personally present at Rome, or at all events as if he had taken down the words of a person who had been there present.

King John appears to have been excessively annoyed by the result, as John de Gray was his intimate friend, and he seems to have regarded the conduct of the Pontiff as a personal affront. He made no answer to several highly courteous letters of the Pontiff, recommending to his favour the newly-consecrated Archbishop, and forthwith gave orders that the Monks at Canterbury should be expelled from their Convent, as persons guilty of High Treason, and that their goods and chattels should be confiscated, and that they should be presently banished from the realm.†

Thus far we are indebted to the author of the *Flores Historiarum* for the legal details of the proceedings in the Roman Curia before the Pontiff himself, which proved to be the prologue of a terrible drama to be played out in England, and in which, strange to say, the newly created Archbishop, who did not venture to set foot in England

* The language of the *Flores* is, "*Qui pro parte regis et episcopi Norwicensis advenerat.*" Vol. II., p. 135.

† Matthew Paris states that King John regarded Stephen de Langton as an enemy of England, because he had been for a long time a reader of Law in the University of Paris, and was well known to the French King.

until the first act of the drama had been concluded by King John's resignation of his Crown to the Papal Legate, proved himself to be, we may almost say, the saviour of his countrymen and of the King himself.

Not to enter into the details of the war between King John and the Pontiff, in which the Pontiff's weapons were an Interdict of the severest character, and two Bulls, one of Excommunication and the other of Deposition, while the King seized the estates of the Clergy, and the majority of the Bishops had to seek safety in exile, the religious trouble was happily appeased by King John's Act of Submission on 15th May, 1213, which opened a gate of peace to the new Archbishop. King John, however, had been meanwhile creating enemies at home, and the Baronage were in arms against him. He lost his Justiciar, Geoffrey FitzPeter, Earl of Essex, a statesman of the school of Ranulf de Glanville, shortly after a Council had been held at St. Paul's, London, in which the Justiciar had received the complaints of the Barons, who demanded the restoration of the Laws of King Henry I.* The King, after the loss of his Justiciar, instead of taking counsel of his English Archbishop, who alone possessed a copy of the Charter of Liberties, which King Henry I. had published at his coronation, and who had taken part with Geoffrey FitzPeter in discussing the provisions of that Charter with the Barons, heaped fresh fuel on the fire and aggravated the dissatisfaction of the Barons by appointing to the high office of Justiciar Peter des Roches, the Poitevin Bishop of Winchester, who, by a liberal distribution of presents amongst the members of the Roman Curia, as has been mentioned above, had induced that Court to quash the election of Magister Ricardus Anglicus to the See of Winchester, then vacant, on the ground of irregularity. On the present occasion it is only

* These are printed in the *Ancient Laws and Institutes*, p. 215, Stubbs' *Select Charters*, p. 96.

charitable to say of King John that his language was evidence of an overtaxed brain, for Matthew Paris in his *Historia Anglorum* informs us that when the King's attendants announced to him the death of his faithful servant Geoffrey FitzPeter, who was his real pillar of strength in resisting the extreme demands of the Barons, he smiled maliciously and said: "*Salutet in inferno, quo iturus est, Hubertum filium Walteri.*"*

Before the death of his English Justiciar, King John had attempted to separate the Clergy from the Barons, and with that object had granted to the Clergy a Charter whereby they were henceforth secured from all interference on the part of the King in their elections, and so far real vitality was given to the forms of election, which had been restored to them under King Henry I. After the death of Geoffrey FitzPeter, and upon the advice of Peter des Roches, the King reissued this Charter and obtained its confirmation by Pope Innocent III., who was at that time, under the King's Charter of Submission, the supreme Lord of the Kingdom of England. The proffered Charter thus insidiously offered, however, had no effect in causing dissension between the Clergy and the Baronage.

It was fortunate for England that the See of Canterbury was at that time filled by a great Jurist, and that the Archbishop, Stephen Langton, sympathised with the noble aspirations of his brother Englishmen, so that whilst he had kept aloof from the Barons at St. Edmunds when they renounced their allegiance to the King, he was enabled to dominate the crisis, and in conjunction with William Marshal, Earl of Pembroke, acting on the King's behalf, to bring about an understanding between the Barons and the King. The result of this understanding was that the

* Matthew Paris, in his *Chronica Majora* gives a fuller account. The author of the *Flores Historiarum* passes over the transactions of the year 1215 somewhat briefly.

Barons submitted their claims, drawn up in a schedule of forty-nine articles, whilst the King, after a careful consideration of those claims, was induced to go beyond them, and issued a Charter in sixty-three articles, whereby not only the rights of the Barons themselves against the Crown were secured, but, after the precedent set by King Henry I., the rights of the King's other subjects were secured against their mesne lords, and this latter object was attained with the free consent of the Barons. The King himself was an unwilling party to this great transaction between a nation and its ruler, but he finally set his seal to the Articles of the Barons, and issued at Runingmede, between Windsor and Staines, the Great Charter (*Magna Carta*) of the Liberties of Englishmen.

The author of the *Flores Historiarum* passes over the day of Runemede, as he writes it, with the simple observation, that the name of the meadow where the great discussion took place between the King and the Barons concerning the peace of the realm, when interpreted, means "The Meadow of Councils," and that it was so called because in ancient days Councils concerning the peace of the realm were frequently held there. He then goes on to describe the misery of the country, as war had again broken out between the Barons and King John, "*ubique luctus, ubique miseria*," and after alluding to the temporary suspension of Archbishop Langton in 1215, which the Pontiff had decreed to gratify King John, who as the Pontiff's vassal was now too powerful at Rome, he mentions briefly the election of three new Bishops, amongst whose names was Magister Ricardus,* Decanus Sarum, who was thereupon consecrated to the Bishopric of Chichester, which had remained vacant, by reason of the Interdict, since the death of Bishop Symon, A.D. 1207.

* The date of the election of Magister Ricardus to the Bishopric of Chichester was erroneously stated as 1214 in the present writer's previous Article in this *Review*.

We must not, however, suppose that Magister Ricardus had remained idle during this Interdict. His position as Dean of Sarum was extremely precarious by reason of the war. The Cathedral was, in fact, situated within the Castle of Sarum, and King John had given strict orders to the Governor, who occupied the castle with Germans and other mercenaries, to keep a strict charge over the Castle and its precincts, and to ignore all claims of ecclesiastical privilege; so that the Governor thought it his duty to expel all the clergy, who were usually* resident within the Castle and its precincts. It is during this period that Magister Ricardus may have given readings in Law in the general schools at Oxford, or in the Law School of St. Frideswide, which the great Bishop Roger of Salisbury had established, in 1111,† as a Priory of Secular Canons, and where secular clerks were educated and trained for the King's Exchequer or Chancery. I am unable, however, to cite any contemporaneous evidence of the presence of Magister Ricardus at Oxford, and Dr. Arthur Duck,‡ of All Souls, Oxford, is the earliest English Civilian who affirms the fact, relying on the Preface to John Andreæ's Additions to the *Speculum Durandi*.§ I cannot, however, find in that Preface any mention of Magister Ricardus as an Oxford Master; Johannes Andreæ speaks of Gulielmus de Dvoreda (Drogheda) as *legens Oxoniæ*, and as having composed a book *de Judiciorum Ordine*, which is probably the MS. preserved in the Library of Caius College, Cambridge,|| but

Sarum Charters and Documents. Rolls Series, 1891, p. 266, *De prima fundatione Sarisberiensis Ecclesiæ.*

† Matthew Paris, *Historia Anglorum.* Vol. II., p. 215, anno 1111.

‡ *De usu et autoritate Juris Civilis in dominiis Principum Christianorum.* Londini. MDCLIII., p. 142.

§ *Durandi Speculum Juris cum Jo. Andreæ additionibus*, Francof. 1592.

|| Johannes Andreæ says of the treatise of William de Drogheda that it is divided into six parts, and begins "*Cum omne artificium.*" I quote from the Appendix to Savigny's *Geschichte*, Vol. III., 637.

as regards Magister Ricardus, he simply speaks of his having preceded Pillius in composing an *Ordo Judiciarius*, of which he had failed to see a copy. Yet almost every Civilian, who has treated of the Literature of the Civil and the Canon Law during the last three centuries, has enumerated Magister Ricardus Anglicus amongst the Readers in Law at Oxford. On the other hand, we have more certain evidence of William of Drogheda having taught at Oxford. There is a house still known in Oxford as Drogheda Hall, and it is said that University College has some deeds relating to it.

There was indeed a period during the Interdict, when the services of Magister Ricardus, as a teacher of Law in Oxford, would have been welcome. King John, in the year 1209, made a warlike expedition into Scotland, being enraged against William, King of Scots, for having allowed many of the English clergy to take refuge in Scotland, and the King on his return halted at Woodstock to receive the homage of the Welsh Nobles, whom he had summoned to attend him there. The King afterwards proceeded to his castle at Oxford, and whilst he was there resident, the prefect of the city of Oxford reported to him that an Oxford student had killed a woman, and had escaped from the police. The King thereupon gave orders that three fellow-students who lived in the same lodgings with the culprit, but knew nothing respecting the culprit's place of refuge, nor had any complicity with him in his crime, should be seized and conducted outside the limits of the City, and thereupon all three of them should be hanged in the presence of the students.* The indignation produced by this glaring act of cruelty and injustice was so great that the entire body of Masters and Students (*tam magistri quam discipuli*), three thousand in number, abandoned the Schools of

* Matthew Paris, *Historia Anglorum*, Rolls Ed., Vol. II., p. 120. The author of the *Flores Historiarum* disposes of this event in three lines.

Oxford and sought refuge at Cambridge, or at Reading, or at Maidstone. Matthew Paris is our authority for this great secession of the Oxford scholars. He had his details from Roger of Wendover, the contemporary Historiographer of the Abbey of St. Alban's, and he says that the King did this iniquitous act to make manifest his wrath against the Clergy.

So far, at least, we have a record of the Secular Clergy, not the Monks, acting as the champions of justice and secular learning at Oxford in the first quarter of the Thirteenth Century, and if higher preferment had not awaited Magister Ricardus in other fields of usefulness both to the Church and to the State, which have been mentioned in the previous Article, his name should find a place in the Walhalla of the Isis, if the busts of the most famous Professors of the University of Oxford should ever be collected in such a sanctuary. As it is, we find him summoned soon after his appointment as Bishop of Chichester to take part with the Bishops assembled at the first Council of King Henry III. in 1215, in reviewing and re-issuing the Great Charter, which King John had trampled under foot, and his name stands fifth in the list of Bishops, at the head of which is Peter des Roches, Bishop of Winchester, who had crossed his path at Rome in 1204. Magister Ricardus seems to have had a marvellous power of conciliating all persons with whom he was brought into contact, and his *Ordo Judiciarius* supplies evidence of the pains which he had taken in his early youth in studying the approaches to the human heart, and the variations of the human character. He held the See of Chichester for three years only, when he was called away to replace an elder brother, Bishop Herbert Poore, in the Church of Sarum, in which he had spent many anxious years as Dean. He has left behind him at Chichester little to remind the present generation of his short tenancy of a Church at that time

almost derelict, but of which a later Bishop Richard became a still more distinguished Pastor, namely, Richard de la Wich, who had also filled a Chair of Law at Bologna, and in whose honour, as the last English Prelate canonised in the Middle Ages, the old chapel of Lincoln's Inn was dedicated.

Ricardus Anglicus, on the other hand, has no tomb in any of the Cathedral churches which he more or less restored, but his admirers may point to the noble Cathedral at Sarum for which he gave the site and of which he completed nearly the entire structure, and in answer to an enquiry, where is the monument of this great Bishop, may well apply to him the classic saying :—" *Monumentum si quæris, circumspice.*"

TRAVERS TWISS.

II.—THE HIGH COURTS AND THE COLLECTOR-MAGISTRATES IN INDIA.

TWO decisions of the High Court of Bengal have just brought to light fresh instances exposing the demoralisation that has been produced in India by the practice of vesting Revenue collectors with Judicial authority—an authority which enables them to evade punishment when they are guilty of illegal and criminal actions. The following appear, from the proceedings in Court, to have been the facts in the cases to which we refer.

Two inhabitants of Eastern Bengal, Chandr Kishore Munshi and Dinendr Nath Sanyal, had altercations regarding their respective shares in the rents of certain lands in the Serajganj subdivision of the district of Pubna. Dinendr claimed a portion of the rents which the tenants were paying to Chandr, and appears to have induced Mr. Beatson Bell, the Collector-Magistrate of the subdivision, to

extort from Chandr an agreement conceding his claim. Accordingly Mr. Bell summoned Chandr to his private residence on Sunday morning, 7th June, 1891, and told him that he should not be allowed to depart until he had come to terms with Dinendr (who was present on the occasion) and had signed an agreement to that effect ; adding that, in case of refusal, Chandr should at once be arrested on a charge of hiring *lathiwals* (club-men). Chandr was then detained without food, and seeing no means of escape from the persecution with which he was threatened, he intimated in the afternoon his readiness to obey the Collector's order. Mr. Bell then wrote out the desired agreement, which both parties signed in the presence of two police officers who were called to witness the execution of the deed.

Some days later, Chandr, on being requested to appear before the Registrar of Deeds and acknowledge his signature to the agreement, refused to do so on the ground that the signature had been obtained by unfair means. Dinendr then appealed to various local authorities for an order to enforce Chandr's compliance, and eventually obtained a decision in his favour from the Subordinate Judge of the district. From that decision Chandr appealed to the High Court at Calcutta, whose Judgment, delivered on the 17th August last, contains the following important passages :—

“ There cannot, we think, be a shade of doubt that the
“ defendant's signature to the agreement was obtained by
“ duress and intimidation. Mr. Bell's evidence is con-
“ clusive on the point. We are of opinion that the
“ defendant's signing of the agreement under the
“ circumstances was not an execution thereof within the
“ meaning of the Act ; indeed it was no execution at all.
“ Execution must mean voluntary execution, that is the
“ signing of the document of the executant's free will. It
“ could not possibly be contended that, if Mr. Bell had

“forced a pen into the defendant’s hand, held it there, and
 “by force guided the hand to write the signature, such a
 “signing was an execution in law; and there is no difference
 “between the two cases. We think therefore that the
 “appeal must be allowed with costs. We cannot con-
 “clude this Judgment without expressing an unqualified
 “disapproval of the conduct of Mr. Bell in this matter.”

This case fully exposes the debased condition into which the administration of Justice has been brought by our vaunted paternal Government of India. The liberty and property of unimpeachable subjects may, it appears, at any time be attacked with impunity; and, as in a Turkish Pashalic, a man may rob his neighbour, provided he secures the Pasha’s co-operation. In the present instance, the victim, after two years of harassing anxiety, was eventually rescued by the intervention of the High Court; but the bulk of the people have not the means of appealing to that independent tribunal, and the Government are meanwhile persistently labouring to curtail its jurisdiction and destroy its independence. The latter object has already so far been accomplished, that a Government servant now sits on the bench of the High Court in the N.W. Provinces, although his appointment by the Indian Executive has been pronounced, by the Chief Justice and the duly qualified Judges of that Crown Court, to be *ultra vires*, and therefore illegal. In the course of the Judgment to this effect, which was delivered in January last, the Chief Justice said: “The
 “object and intention of the Imperial Parliament could not
 “have been to place in the hands of the Governor-General
 “in Council a power which would enable the Executive in
 “India to constitute a High Court of one Barrister Judge
 “acting as Chief Justice, and of Acting Judges who could,
 “at the will of the Executive, be removed from their
 “appointments in the High Court, and could, in the case
 “of Civilian Judges, be gazetted out of the Court to

“ perform the duties and enjoy the emoluments of Assistant
“ Magistrates. Any such intention would be contrary to
“ the policy pursued by Parliament since the Act of Settle-
“ ment became law, a policy which has secured to the
“ subjects in England protection against the unlawful and
“ unauthorised acts of the Executive. Hallam, in the
“ *Constitutional History of England*, says :—‘ It had been the
“ ‘practice of the Stuarts to dismiss Judges without
“ ‘seeking any other pretence, who showed any disposition
“ ‘to thwart Government in political prosecutions. The
“ ‘general behaviour of the Bench had covered it with
“ ‘infamy. Though the real security for an honest Court
“ ‘of Justice must be found in their responsibility to
“ ‘Parliament and in public opinion, it was evident that
“ ‘their tenure of office must, in the first place, cease to be
“ ‘precarious, and their integrity rescued from the severe
“ ‘trial of forfeiting the emoluments upon which they
“ ‘subsist.’ That the risk of the Executive in
“ India desiring to limit the judicial powers of Courts in
“ India in matters touching the Executive is not merely
“ hypothetical, may be inferred from a proposal made some
“ years ago, that the Courts in India should, by legal
“ enactment, be prohibited from questioning the legality of
“ the acts of the Governor-General in Council. That the
“ risk of the Executive in India seeking to set the High
“ Courts in India under its control is not illusory,
“ may be inferred from the introduction of a Bill in
“ Parliament, by one section of which, if it had been
“ passed, an Order in Council might have been made for
“ the purpose of regulating the High Courts without
“ Parliament being consulted. Under another section of
“ that Bill, a local authority could have been invested with
“ the discretionary power specially reserved to the Chief
“ Justice, to select and nominate from among the Judges
“ of a High Court, such Judge or Judges as it might deem

“ preferable for the hearing and determining particular
“ cases in which the local authority might be interested.
“ The intention of Parliament in framing the Acts under
“ which the High Courts in India were constituted, must
“ have been to establish judicial tribunals which command
“ the respect of the people of the country, and which would
“ not be liable to any possibility or suggestion of influence
“ on the part of the Executive.”

Let us now look into the particulars of the other case referred to at the commencement of this Article: it occurred in a different part of the Province of Bengal; but the principal figure in it is still Mr. Beatson Bell, whose conduct as Sub-divisional officer at Serajganj seems to have given so much satisfaction to the Government that he was soon afterwards selected to officiate as Divisional officer in the important district of Khulna. In July last he sent word to the officers of a zemindar owning an estate near the village of Chaknagar, that he would arrive at that village at 10 a.m. on the 20th July, and that provisions should be ready for himself, his horse and his groom. He arrived, however, two hours earlier than the time mentioned, and, not finding a glass of milk ready for him, he entered the zemindar's *cutchery* (estate office) and called for the *naib* or head officer. Baboo Keshab Lal Mittra, who was in the office at the time, informed him that the *naib* had gone to Khulna, and that he, Keshab, was a *mohurir* (writer) in the service of the zemindar. Thereupon Mr. Bell struck him sharply with his riding cane, and, on the man inquiring for what offence he had been struck, renewed the assault with great violence, causing blood to flow from the wounds he inflicted, until the man fell to the ground in a fainting fit. Fever ensued, and Keshab was laid up for a week; but as soon as he was able to travel to Khulna, he proceeded thither and laid before the Deputy Magistrate a charge of assault and criminal trespass against

Mr. Bell. The Deputy Magistrate, afraid of becoming instrumental in the prosecution of his superior officer, dismissed the case, in the complainant's absence, as trivial and improbable, refusing, at the same time, to furnish a copy of the proceedings; and the next day he issued a rule, calling on the complainant to show cause why he should not be prosecuted for bringing a false accusation against Mr. Bell. Thereupon, Keshab waited on the Sessions Judge of Khulna for an order to compel the Deputy Magistrate to furnish a copy of the proceedings by which the plaint against Mr. Bell had been dismissed. Now as an appeal lies from the decisions of the Sessions Judge to the High Court, Mr. Bell, in his anxiety to keep the case out of the latter Court, then openly moved in the matter for the first time, and wrote to the Sessions Judge as follows:—

“Bhagirat, 31st July, 1894. My dear Pope,—I am just informed that a zemindar's mohurrir, whom I struck the week before last, brought yesterday a case of assault against me before the Deputy Magistrate who wrongly dismissed the case. If this is so, please set aside the order under sect. 20, and order a re-trial anywhere you want. I quite admit striking the man: I was in the middle of a 40-mile ride, and had sent word to the zemindar's cutchery to have a glass of milk for me. I found no milk, and being very hot and thirsty, and having a cane in my hand, I regret I lost my temper and struck the mohurrir several times. I hear they have petitioned the L.G. I shall tell him the real facts as soon as he comes here to-morrow. You may file this in the record. Please let me have an answer to-morrow.”

This endeavour to have the case disposed of through some other subordinate was, however, frustrated by the complainant's determination to move the High Court in the matter. As soon as Mr. Bell heard of this intention, he

had an interview with the complainant's pleader, when the following conversation took place between them :—

Mr. Bell :—" I have already told everything to Sir Charles Elliott. He said that he will support us if you push the matter to any further length."

Pleader :—" I knew that Sir Charles Elliott would take up your cause ; he is in the habit of doing so in cases like this."

Mr. Bell :—" What do you mean by moving the High Court ? I have already said that I am willing to be tried by any magistrate anywhere. What can the Chief Justice do ? Can he dismiss me or do me any harm ? Sir Charles does not care for the judgment of the High Court."

Pleader :—" We wish to have an authoritative judgment from the highest tribunal in this country ; and then agitate the matter as far as we can, to purify the administration of criminal justice in this country. This is a typical case of the injury that is done to the people by combining the Judicial and Executive functions in one person. If Sir Charles supports you, there are higher authorities whom we must appeal to in the event of Sir Charles backing you."

Mr. Bell :—" What can you do as regards the Deputy Magistrate ? He has already apologised for what he has done, and there the matter ends. Sir Charles would support him. I am also bound by honour to pay him his costs and to make up the deficit in his salary, if he is degraded. Will you consent to compromise the case as against him, if he pays some amount of compensation ?"

Pleader :—" I cannot see our way to compromise the case against him."

Accordingly, on the 6th August, a petition was presented in the High Court praying that the case be removed to another district, on the ground that all the other magistrates of Khulna being subordinates of the accused, a fair and impartial trial could not be had in that district. In compliance with the petition a rule issued on Mr. Bell

and the Deputy Magistrate, which soon brought matters to a conclusion. Mr. Bell came to Calcutta, and addressed a letter to the Judges of the High Court in which he said:—
“I regret that I assaulted Keshub Lal Mittra as I did. I
“committed the assault under the impression that I was
“being grossly insulted, and possibly that impression was
“wrong. If it was unfounded, I am sorry for what has
“happened and I hereby apologise.” The Deputy Magistrate at the same time confessed that his proceedings were wrong, and said that he had discharged the rule calling on the complainant to shew cause why he should not be prosecuted for bringing a false accusation.

Mr. Bell's apology, extorted by a fear of the High Court, was of course no adequate redress to a man who had been wantonly insulted and subjected to great bodily suffering, and afterwards illegally and impudently thwarted in his legitimate endeavours to set himself right in the eyes of his countrymen. The prosecutor, nevertheless, was advised not to carry the matter further, as the chance of his receiving any substantial redress, in the existing condition of things in India, was very slender; and the Mymensing case (stated in the *Law Magazine and Review* for February, 1893, pp. 97, *seqq.*, Art., *A Recent Criminal Prosecution in Bengal*) was cited in support of the advice.

A most lamentable picture of our Indian tribunals is thus presented in the three cases mentioned above—a living picture of Law Courts, where Revenue collectors, untrained in Law, and other servants of the Indian Government sit as Judges and adjudicate under the immediate control of their superiors in the Executive service, violating the Law and the first principles of Justice, whenever such violation is called for in the interests of the Executive or of any member of that body. The unprincipled policy which arms the collectors of Revenue with Judicial authority is based on the assumption that arbitrary power is indispensable for

the efficient raising of the Revenue, and an opinion to that effect was actually avowed in 1822, when the Governor of Madras wrote to the Home authorities that "it was absolutely necessary for the security of the Revenue that the jurisdiction of the Supreme Court should be more strictly limited, and that it should be completely debarred from all cognizance in any shape of the acts of the Government." Fortunately, wiser counsels subsequently prevailed, and, for thirty years, the aim of the authorities in India was to affirm the supremacy of the Law as affording the best guarantee for the peace and prosperity of the country. During that period many salutary enactments, including Macaulay's Penal Code as revised by Sir Barnes Peacock, tended rapidly to improve the administration of Justice.

Meanwhile the Government of India was transferred to a member of the British Cabinet, that is, to a Minister influenced by interests foreign, and sometimes actually hostile, to the interests of our great dependency. While the transfer was under consideration, its pernicious tendency was foreseen and denounced; but the warning was neglected, and the predicted evil began to operate very soon after the inauguration of the new *régime*. The financial resources of India were deliberately diverted from their legitimate purpose and used for the promotion of Ministerial interests, whence there arose a constant demand for additional revenue. For satisfying that demand, the Government of India revived the policy of 1822, and a very unseemly war has since been waged against the Indian High Courts, which constitute the only bulwark protecting the maintenance of Law against the encroachments of the Executive in that country. In this perilous war, the adversaries are unequally matched. The Government of India, represented by the Indian Secretary of State, being responsible only to the British Parliament, have secured the support of that

paramount power by sacrificing to its members the resources which belong to India; and with their political responsibility thus neutralised, they employed the Indian Legislature in passing measures *ultra vires* for obstructing appeals to the High Courts and thereby restricting their jurisdiction. The weakened control of those Courts over the subordinate tribunals of the country has been painfully manifested in all the three cases that have been noticed. The guilty in every instance escaped punishment, whereby encouragement has been afforded to illegality and crime. The High Courts, on the other hand, do not receive all the support which Courts of Justice generally derive from the influence of public opinion. Antagonism and distrust have been sown among the various races and sects composing Indian society, and the voice of the public has, in consequence, often been indistinctly heard.

People at home should remember that the interests—the lives, the liberty, and the property—which the Indian High Courts are called to protect, are, in a great measure, English interests; and that the British constituencies, by suffering their representatives in Parliament to allow the continuance of a state of things such as now prevails in India, are jeopardising great interests of their own. Millions of Englishmen and Englishwomen derive their subsistence from trade, industries and professions connected with or exercised in India. Has any thought been taken as to how the condition of those millions would be affected, were a sudden popular outbreak to occur, such, for instance, as the rebellion of 1857-8? And yet to believe that the rights of a hundred millions of intelligent and industrious people can long be trampled upon with impunity, is to ignore the teachings of History. It is evident from the native press that a deep and widespread feeling of discontent and irritation smoulders in the minds of the Indian populations, and that its general manifestation is restrained only by the

presence of the large military force which is entertained in India, and employed chiefly in frontier expeditions. Were political complications to necessitate the removal of a portion of our Indian garrison, the circumstance would most probably, as was the case in 1857, incite to action the malcontents among our Indian subjects, as also the Indian allies and feudatories whom we have oppressed and despoiled in violation of our treaties and engagements. That British rule in India, if interrupted by any general movement of the kind, would be re-established by the forces at the command of the United Kingdom, there is, of course, no reason to doubt. At the same time it should not be forgotten that, on the last occasion, British supremacy trembled in the scale for upwards of a year, and that unspeakable horrors marked that period of struggle. Can the risk of similar occurrences in the proximate future be contemplated with indifference, and without any endeavour being made to ward off that risk, by removing the causes which have produced it? The primary cause lies obviously in the vicious administrative combination of 1858 which placed the resources of India at the disposal of the British Cabinet for the time being, with the result that they have been wasted in unwise and disastrous enterprises, instead of being used in promoting the welfare and prosperity of the people. The Afghan war of 1878-80 cost an appalling amount of blood and treasure, and terminated in the humiliating conditions under which we had to evacuate the Amir's territories. The conquest or annexation of Upper Burma cost almost as much, in blood and treasure, as the invasion of Afghanistan had cost, and the latter task, undertaken in 1885, has yet to be completed; meanwhile the people of India are burdened with the debt contracted to defray the cost of the unsuccessful enterprise.

The cases stated in the foregoing pages are by no means isolated instances of the injustice and illegality perpetrated

by Collector-Magistrates in India. Such instances are of almost daily occurrence, and the subject is being discussed by the Indian press, both Native and English, throughout the country. A practice has prevailed with the Government of India, when a private estate falls into its hands, of arbitrarily claiming a portion of the neighbouring property and of forcibly taking possession of it, without submitting the claim to a Judicial decision. It may be remembered that a judgment of the Privy Council, delivered on the 6th February, 1892, affirmed a decision of the High Court of Bengal to the effect that certain lands in the Monghyr district, forcibly taken possession of by the Government of India as belonging to the Bhaunundpur zemindari, never formed part of that estate, which the Government had bought at a revenue sale for the absurd price of one rupee. In like manner the Collector-Magistrate of the Eastern Bengal district, of which Jamalpur is a subdivision, arbitrarily took possession of a *doba*, or lake, lying in the vicinity of an estate acquired by the Government, and the fishing in it having been leased out by the owner, he prosecuted the fishermen for theft of the fish they had taken. The prosecution failed, as the Deputy Magistrate, who heard the case, refused to convict of criminal action men who had only used a privilege legally acquired by them. The Collector-Magistrate then had the fishermen arrested again on a charge of having fouled the lake with their nets, and he had them tried by a subordinate under his immediate control, and sentenced to one month's hard labour. The ownership of the lake is still a contested matter, and the case, in its various features, presents one more instance of illegality committed for the purpose of spoliation.

Numerous other cases of the kind might be adduced here, but they would unduly lengthen the present Article, while the cases already cited, have, it may be hoped,

sufficiently clearly exposed the spirit of aggression and rapacity which animates the Indian Executive towards the people placed under its protection. It must have been in regard to this state of things that Lord Lansdowne said, in India, on the 23rd January last :—" I believe the people of " this country recognise the advantages of our rule : but if " they came to associate it with inquisitorial prying into " their private affairs, and with exaction and oppression in " one shape or another, their affection for it would be of " short duration."

That the line of conduct pursued by Collector-Magistrates has been deliberately adopted by the Government of India, there is little reason to doubt, when we see the higher authorities in India come forward on every occasion to defend and protect those officials from the consequences which should properly follow their misdeeds. The defence, however, is not based on argument or facts, but consists merely of emphatic expressions of opinion regarding the personal character of the officer found to have done wrong. Thus, the Lieutenant-Governor of Bengal, in referring to the conduct of the Collector-Magistrate who had wantonly insulted and persecuted Raja Surja Kant Acharya, of Mymensing, declared that "there was no justification " whatever for any imputation on the motives of the officer : " That His Honour has no doubt regarding the Collector-Magistrate's good faith, integrity and honesty of purpose." The same sort of defence is now set up for the protection of the Collector-Magistrate of Cachar, who is found to have been guilty of gross irregularities in the case of a murder committed at Balladhun on the Eastern frontier. The Collector-Magistrate had refused to allow the prisoners to consult and instruct their pleaders, and he insisted on cross-examining them before the case for the prosecution had been made out ; and when the witnesses for the prosecution gave their evidence, he would not allow them to be cross-

examined by the pleader for the prisoners. The High Court, referring to these iniquitous proceedings, remarked, in their Judgment on appeal :—" The unfairness of such a " course is so obvious that we cannot understand how it " could be adopted or defended." The Government of India, however, rose to the occasion as regards the defence, and said :—" We admit that the Collector-Magistrate and " Sessions Judge abused the trust reposed in them ; but they " acted in good faith, and thus they did nothing unworthy " and deserving of punishment. The Governor-General " in Council has no doubt of the *bona fides* of Mr. Harold's " motives."

Now here is evidently an enigma. It is difficult to believe that the Viceroy could see good faith and nothing deserving punishment in the conduct of officers the unfairness of whose proceedings must be obvious to every Englishman ; and this too, in a case where the conduct of those officials directly tended towards, and actually resulted in, the condemnation to death of innocent men, upon evidence transparently untrue.

The enigma becomes still more obscure when it is seen that almost identical expressions are used by the Indian head-officials for the defence of a guilty Collector-Magistrate ; and the perplexity is not diminished when the Secretary of State is seen to accept, without comment, all those emphatic expressions of confidence, although the grounds on which they repose are never indicated. In fact, the matter tends to assume the form of a conspiracy ; but what could be the object, the motive, of such a conspiracy ? The only point which seems to stand out clearly in this dark matter is that the Home Authorities and those in India must have a common motive and interest in shielding the Collector-Magistrates from the natural results of their illegal, arbitrary, and often rapacious proceedings. However difficult the question thus raised may appear, its

solution is urgent, seeing that it would be irrational to expect that a course of such glaring injustice and oppression on the part of the Indian Executive as has been exposed in the pages of this *Review*, can long be pursued without provoking popular outbursts and resulting in eventualities of a still more serious nature.

J. DACOSTA.

Postscript.—By the Calcutta Mail of 10th October we learn that the Deputy Magistrate who shamefully abused his authority in order to screen the reprehensible conduct of the officiating Collector-Magistrate of Khulna, and whom Mr. Bell considered himself in honour bound to indemnify if he were degraded, has, instead of punishment, received encouragement and reward at the hands of the head-officer of the province. The *Calcutta Gazette* informs the public that the guilty officer in question has been promoted in the Government service, such promotion carrying with it an increase of pay.

The meaning of this extraordinary step cannot be misunderstood. It is a fresh blow struck by the Indian Executive in its struggle to destroy the jurisdiction of the High Courts, which were intended by Parliament to secure the due administration of Justice throughout India, and to protect the rights of her people against the encroachments of the Executive.

In the Serajganj case, the High Court pointedly directed the attention of the Government to the wrongful proceedings of the Collector-Magistrate of that subdivision. The aim of the Government, therefore, in entirely ignoring the misconduct of its officer in that instance, in following a similar course with regard to one of its servants implicated in the Khulna assault case, and rewarding the other, has unmistakeably been to lower the dignity of the High Court in

the eyes of the public, and to teach the people that the Executive is above the Law, and that it is vain to seek in a High Court any redress for acts of the Government and of its officers.

Were it intended to exasperate the people and incite them to deeds which would furnish the Executive with a plea for resorting to military force, and driving the people by terrorism into a complete surrender of their rights and their property, no surer course could be adopted than that which is actually being pursued. This perilous course, moreover, can be arrested only by Parliament, seeing that the Government of India, as represented by the Indian Secretary of State, is amenable to no other Constitutional authority. At the same time, it is evident that Parliament will not move in the matter so long as the British constituencies shew no disposition to remind their representatives that, in accepting the power of control over the Government of India, they have contracted the positive obligation of seeing that our great Dependency, on the safety and prosperity of which the welfare of the English people so largely depends, is administered with integrity and justice.

J. D.

[*Note.*—The facts of record in the cases which form the subject of the present Article seem to us amply to warrant the protest made by the author in earlier pages of this *Review*, against the Fusion of the Executive and Judicial Powers in India, and equally to justify the contention maintained throughout, that there has been for years past, and still is, in the minds of the Indian Executive, a fixed design to destroy the power and the independence of the High Courts established by the Crown. We are also forcibly impressed by the present cases, as we were by the *Myensing* case, with the sad deterioration which the Indian

Civil Service appears to have suffered since the substitution of the "Competition Wallah" for the old Haileybury student. The men who openly admit having entered a native landowner's office and struck one of his servants, simply because they were "hot and tired," and imagined themselves to be insulted by the absence of a glass of milk, are not the men who can safely be entrusted with judicial power, or who should even be employed at all in the Indian Civil Service, if we really desire to rule India with integrity and justice.—ED.]

III.—EXTERRITORIALITY, AND THE JURIDICAL POSITION IN ENGLAND OF FOREIGN SOVEREIGNS AND AMBASSADORS.

TWO very recent decisions of our Courts have called attention to a matter comparatively little considered in English jurisprudence, viz., the Juridical position of Foreign Sovereigns and Ambassadors in England.

In *Mighell v. Sultan of Johore*, L.R. [1894] 1 Q.B. 149, an action for breach of promise of marriage was brought against the Sultan of a Malay State. The contract had been made in England, and the Sultan had resided here under an assumed name. But the Court of Appeal laid down—

- (1) That the Court would take judicial notice of the status of a Foreign Sovereign :
- (2) That the Court accepted, as conclusive, the certificate of the proper Department of State of the British Government that the Sultan was an independent Sovereign, and that in an English Court the independent Sovereign of the smallest State stood on the same footing as the monarch of the greatest :

- (3) That the Courts of England will decline jurisdiction over any Foreign Sovereign, unless he elects to submit to their jurisdiction when the matter in question comes before the Court :
- (4) That a Foreign Sovereign does not waive his rights by coming to England *incognito*, nor by any act short of submission in Court to the jurisdiction.

This submission, it would appear, may be effected—

- (a) By notice, when sued, that he will not claim his privilege. (In this respect he differs from the English Sovereign, who cannot be sued) :
- (b) By suing in English Courts, in which case he must submit to a counter-claim : *
- (c) Where notice is given him that he may formulate a claim to funds within the jurisdiction of the Court.†

The decision rests on, but is an extension of, the *Parlement Belge* (5 P.D. 197), a case, however, of tort and not of contract, and disposes of supposed *dicta* of Lord Campbell in *Wadsworth v. Queen of Spain* (20 L.J. Rep. Q.B. 488), which appeared to distinguish between the private contracts and public acts of a Foreign potentate. The subject had been obscured by the case of the *Duke of Brunswick v. King of Hanover* (6 Beav. 1 ; 2 H.L.C. 1), in consequence of the allegiance due to the Crown of Great Britain by the latter Sovereign in the *persona* of the Duke of Cumberland, and by *dicta* of writers on International Law as to the effect of *incognito*. The decision appears to clear away all risk of contentious discussion as to whether a Foreign Sovereign's contract is a matter of State policy or private concern. One more point, however, requires notice, viz., that the status of the Foreign Sovereign is considered by the Courts on general principles, and is unaffected by the Diplomatic Privileges Act of 1708.

* *Strousberg v. Costa Rica*, 44 L.T. 199 ; *Peru v. Dreyfus*, 38 Ch. D. 348.

† *Gladstone v. Musurus Bey*, 1 H. & M. 495 ; 33 L.J. Ch. 155.

The other new case is that of *Musurus v. Gadban*, L.R. [1894] 1 Q.B. 533; 2 Q.B. 352. Musurus Pasha was long Turkish Ambassador to England. He retired in December, 1885, and left England in February, 1886. On his death in Turkey, in 1890, his executors sued in England for certain Turkish bonds. The defendant counter-claimed, and the counter-claim was resisted on the ground of the Statute of Limitations, 21 Jac. I., c. 16. This defence was rejected on the ground that the deceased Pasha could never have been sued while in England, and that during his absence the Statute did not run. The grounds of the decision will come under review more fully later; but one calls for immediate comment. The Court say that a writ issued against an Ambassador is utterly void, and that no cause of action can arise during the period of privilege. This may be correct from the point of view of the Statute of Limitations, and it is only fair when the *lex fori* gives a privilege for suit that the privileged person should not be allowed, when his privilege drops, to claim the benefit of the *lex fori* in the form of the Statute of Limitations. But if the writ is void it is difficult to see how its nullity can be covered by waiver of privilege; although all prior cases, and the *Sultan of Johore's* case, treat writs against Foreign Sovereigns or Ambassadors, not as absolutely void, but as voidable at their election, and the only effect of the Sultan's case is to define the evidence on which the Court is to be satisfied of such election. The cases, however, mark a step in the growth of English Judge-made Law, upon the Civil side of what is called Exterritoriality.

It is true that Lord Campbell, in the *Magdalena* case,* states that for *all* juridical purposes an Ambassador is supposed to be still in his own country; but all that that

* 2 E. & E. 94 at 111, quoted by Davey, L.J., in *Musurus v. Gadban*, L.R. [1894] 2 Q.B. 352 at 361.

case decided was that a public Minister duly accredited to *and received by** Great Britain, is, on well-established principles, *privileged* from all liability to be sued here in Civil actions, and the decision in *Musurus v. Gadbant*† was only that no *available* cause of action accrued in England against an Ambassador during his term of office or the reasonable time during which he remains after its termination; and this opinion had, it must be said, no operation in favour of the Ambassador, for it prevented his executors from setting up the Statute of Limitations.

In the present Article I propose to put forward some facts and considerations, chiefly with reference to the Criminal Law, which, if they do not cut down the theories as to the privilege of an Ambassador, certainly shew that agreement as to its extent and effect is by no means complete.

The first trace of the now familiar doctrine of the Extritoriality of Ambassadors is said to be found in the works of Ayrault (1576) and Albericus Gentilis (1585),‡ but it is usually associated with the name of its most famous exponent, Grotius. By him as by all subsequent publicists, this doctrine has admittedly been based upon a legal fiction.§

It may indeed be that a legal fiction is not to be contradicted so as to defeat the purpose for which it was

* On this point see *New Chile Gold Mining Co. v. Blanco*, 4 Times L.R. 346, where Huddleston, B., and Manisty, J., differed on the question whether receiving as well as accrediting was necessary to create privilege.

† L.R. [1894] 1 Q.B. 533; 2 Q.B. 352, overruling the doubts raised in *Taylor v. Best*, 14 C.B. 487.

‡ See an Article by M. Nys, 16 Clunet, *Journ. Dr. Int. Privé*, 176, and Wicquefort, ed. Barbeyrac, p. 140.

§ *De Jure Belli ac Pacis*, c. xviii., s. 5 (ed. Whewell, Vol. 2, p. 209), where he says, "*Placuisse gentibus ut communis mos, qui quemvis in alieno territorio existentem ejus loci territorio subjecit exceptionem pateretur in legatis ut qui sicut fictione quadam habentur pro personis mittentium ita etiam fictione simili constituerentur quasi extra territorium.*"

invented, any more than the hypothesis upon which a hypothetical argument is based;* but if it can be shewn that Exterritoriality is, as Laurent† has described it, “the “most absurd fiction that Legists have ever invented,” and that the immunities, such as they are, of Ambassadors can be based either upon Statute Law or upon grounds which need no legal fiction for their justification, it would seem desirable to relegate the Exterritoriality of Ambassadors, like that of ships of war, to the limbo of exploded explanations of International usage.

It was described many years ago by Lord Stowell as “a “fiction which ought not to be extended” (*The Caroline*, 6 Ch. Rob. Adm. Rep. 468), and Lord Langdale, in the *King of Hanover's Case* (6 Beavan, p. 43) pointed out that, whether styled doctrine or fiction, if carried out to its legitimate consequences, it would render it highly dangerous for the Sovereign of any country to admit within his dominions any foreign Sovereign or even any Ambassador of any foreign Sovereign: and that “in practice “it has been signally unserviceable, as it fails just at the “point at which a demand is made upon it, *i.e.*, when it is “appealed to to solve a question of special and novel “intricacy.” Neither States nor Jurists are in accord as to the meaning or the limits of the doctrine: and it is not only useless but also delusive, and, like many an other misunderstood metaphor, has been made the basis of extravagant and unsubstantial claims, such as—

- (1.) The right to grant asylum in an Embassy :‡
- (2.) The right to set up judicial tribunals :
- (3.) The right to complete and absolute immunity from

* *Fabrigas v. Mostyn*, 1 Cowp. 161, and see per Bramwell, B., in *Att.-Gen. v. Kent*, 31 L.J. Ex. 391 at 397.

† Vol. III., p. 14.

‡ *V. Thomasius, De Jure Asyli, passim.*

the sanitary and all other municipal laws of the country in which the Ambassador lies.*

It is not therefore strange that there is a strong disposition among modern juriconsults† to discard the phrase of Grotius and to limit the immunities of Ambassadors to the strict necessities of their position; and with the spread of civilisation and the growth of Constitutional government, while the risks of an Ambassador's position are lessened and he is no longer in need of a *sacro-sanct* status to protect him from the autocratic acts of the ruler to whom he is sent, in return for this increased amount of effective protection incident upon stable and well advised government, he is expected to lay aside as extravagant the claims with which he met in the past the Sovereign to whom he was accredited.

(1.) If an offence is committed by a person of the suite outside the Embassy, the Exterritoriality, if any, of the

* 2 Phillimore 234. *U.S. v. Zeffer* (1836), 4 Cranch (U.S.) 704; *U.S. For. Rel.*, 1878, p. 403; 1876, pp. 17, 321, 334, 338; Wharton, *Conflict of Laws*, s. 16. During this year a magistrate declined process on the ground of privilege against an employé of the Dutch Legation who kept fowls at his private residence so as to be a nuisance; but application to the Queen of Holland by the neighbouring sufferers led to the immediate abatement of the nuisance.

† The chief authorities for and against Exterritoriality are :—

For.	Against.
Grotius.	Lampredi.
Martens.	Azuni.
Huber.	Pinheiro-Ferreira.
Puffendorf.	Heffter.
Vattel.	Bar.
Bynkershoek.	Laurent.
Wicquefort.	And among English Common Lawyers—
Fœlix.	Coke.
Wheaton.	Foster.
Wharton.	Sir A. Cockburn.
Phillimore.	Sir James F. Stephen.
Bluntschli (see <i>Rel.</i> , 1879, p. 379).	
Calvo (see I., 650).	

Embassy would not protect the offender from arrest any more than the pretended Extritoriality of a warship protects the arrest ashore of its sailors for offences there committed, although the interest of their Sovereign and the efficiency of the ship may be materially affected by their imprisonment.*

Not long since two sailors of a German warship committed a crime in Capetown. One was caught and tried by the local law; the other escaped to his ship; his surrender was refused, and he was taken home to Germany for trial away from the evidence of his guilt. And some sailors of a Spanish public vessel were lately tried (Central Criminal Court) in London for stabbing a man in Wapping. Sir Alexander Cockburn, indeed, has summed up what I believe to be the prevailing opinion in England, "*ultra* the warship itself, which is the property of its Sovereign, and the maintenance of discipline on board it, the doctrine of Extritoriality is an idle and unnecessary fiction;"† and men-of-war must, it would seem, comply with port regulations and the Quarantine laws.‡ The Extritoriality, then, if any, is attached to the Embassy by reason of the Ambassador's presence, *i.e.*, is in the nature of a privilege from suit,§ and is personal and not local.

(2.) If a crime is committed in the Embassy by a person not belonging to it, English Courts have undoubtedly jurisdiction to try it, and, if the offender is a British subject, exclusive jurisdiction. This is also maintained both by France|| and Germany,¶ and it would, I believe,

* Cockburn, C.J., *Fugitive Slaves Commission*, 1876, p. xxxvii.

† *Report, Comm. on Fugitive Slaves* (1876, p. xlii.).

‡ See Walker, *Int. Law* (1893), 228.

§ Smith, L.J., in *Musurus v. Gadban*, L.R. [1894] 2 Q.B. 352, at 353, says that an Ambassador cannot be effectively sued while he is *de facto* Ambassador, because he is *exempt* from the jurisdiction of the Courts of the country.

|| *Re Mickilchenkorff*, 3 Calvo (4th ed.) s. 1505.

¶ *Entscheidungen Strafgerichtskammer*, Vol. III., p. 70 (1880).

now be almost universally conceded that such a crime is to be regarded as committed within the jurisdiction of the Territorial Law.

(3.) If the Ambassador chooses to prosecute such a person, that person cannot raise an exception that the act is only cognizable by the personal law of the Ambassador. It is impossible to vouch against a diplomatist a fiction invented for his protection. The fiction of Exterritoriality must give way to fact, except in the cases of the persons whom it exists to protect.* On the other hand, by inviting protection, the Ambassador waives his immunities *pro tanto*.

(4.) Where the offence is committed within the Embassy by a person belonging to it :

(a.) If the Ambassador can dismiss him, he can prosecute him here ; and

(b.) If he cannot dismiss, he probably cannot prosecute here, because the privilege, such as it is, is that of the sovereign, who alone can dismiss the accused.

(5.) If the person is a British subject, the exception does not seem to be open to him in any case of crime.†

American experience has been more fruitful than English in proceedings against diplomatists. In England the Crown can always stop a prosecution by entering a *nolle prosequi*, which amounts not to an acquittal, but to a stay of all proceedings. In America, this cannot be done by the Supreme Government in the case of offences against State Laws, but the same end has been attained by reserving to the Supreme Court all questions relating to foreign diplomatic offices.‡

* 3. *Entsch. Strafgerichtskammer*, p. 70.

† But as to this, see *Macartney v. Garbutt*, 24 Q.B.D. 368.

‡ U.S. Const., Art. 3. See *U.S. v. Ravara*, 2 Dall. (U.S.) 299. *Manhardt v. Soderstrom*, 1 Binn. (Pa.) 138. *Commonwealth v. Kosloff* (1816), 5 Serg. & Rawle (Pa.), p. 545 (Gilghman, C.J.).

The old rules of English Law made all crimes except piracy depend upon fealty* or allegiance, which in feudal times depended upon tenure of land, and could therefore be double. But the special provisions as to trial by jury made it impossible to punish in the ordinary courts of law offences, even treason, committed without the realm. The special Courts of the Constable and Marshal, and of the Admiral administering the Civil Law (*jus Caesarium*), alone had cognizance of offences by Englishmen upon the high seas or abroad; but their powers and procedure were jealously regarded and ultimately transferred by statute to the Courts of Common Law. As to matters arising within the realm neither of these Civil Law Courts had any jurisdiction, and upon the extinction of the Constable's Court, except so far as its jurisdiction is transferred by statute to Military Courts, of which it was the progenitor, the territorial theory of crime, already become familiar by reason of the large influx of foreigners into England, became general, and is now regarded as characteristic of English Law.

There had never at any time been any recognition in England of the Exterritoriality, in the literal sense, of an Ambassador's dwelling-place† in England. Earlier

* The penalty was forfeiture of the offender's fief. Bracton, *de Exceptionibus*.

[We must demur to the doctrine that allegiance, in Feudal times, depended upon tenure of land. Had this been the case, the mass of the people would, in all countries, have been free from any allegiance, which, it is submitted, would reduce the doctrine *ad absurdum*. Allegiance depended upon birth within the territorial jurisdiction of a particular Sovereign and, therefore, could not be double. Fealty or Homage, on the other hand, being due for lands held of a superior, might be double, and the Sovereign of one country might himself hold fiefs in another, and, in the *persona* of the holder of such fiefs, owe fealty to the Sovereign of whom they were held, a fact which is familiarly exemplified in the mediæval relations of the Kings of England and Scotland, and of England and France.—ED.]

† Wharton, *Conflict of Laws*, s. 16, goes much too far in saying that the residence of a foreign Ambassador is regarded as part of the territory of his Sovereign.

Ambassadors were usually lodged within one of the King's Palaces, and were supplied with food and everything as guests, but if they misbehaved, the King was quick to arrest them or confine them to their quarters, or expel them from the country. It would have been idle for them to claim Exterritoriality as to a part of the King's own house, and they were privileged from all arrest on civil process,* or against their goods because of the rule as to the verge of the Royal Court, where no civil process could be executed save by Royal permission, while with respect to crimes within the Court a special tribunal and jurisdiction existed, which still survives upon the Statute Book.†

This special privilege and special jurisdiction have nothing whatever to do with Exterritoriality. The English King himself is not liable to suit or indictment,‡ but not because he is Extra-territorial; and the reason why seizure of person or goods on civil process in his residence without his special leave is prohibited is to prevent scandal and disorder unbefitting his dignity; and a like privilege from arrest on civil process attaches to advocates, witnesses, and parties *eundo, morando, et redeundo*, from any of the Queen's courts of justice, or even from an Arbitrator's court, and there is strong reason to think, though space fails for proving here, that historically the position of an Ambassador rests upon the form of safe-conduct given him as a condition precedent to his right to enter the realm at all.§

The Act of 1708 is careful to say nothing about real property; and in subsequent Acts special provision is

* See *Att.-Gen. v. Dakin*, 1870, L.R. 4 H.L. 338.

† 33 Hen. VIII. (1541), see 1 Rev. Stat. (2nd ed.), p. 379. The Act contains no special reference to the position of Ambassadors.

‡ The old theory of crime in England made the essence of crime to consist in breach of fealty or of the King's peace; only in the case of Charles I. was any attempt made to punish a King as for crime.

§ *Re Freston*, 11 Q.B.D. 545.

made for levying upon the owner of a house occupied by an Ambassador the land tax* and the municipal assessments,† computed on the value of the house. The land remains as much subject of English taxation as ever, notwithstanding the occupancy of the privileged alien, but the remedy by distress against his goods upon the land is taken away. Where, as is possible since 1870,‡ a foreign State owns its Embassy, the remedy against the owner is taken away so far as to give privilege under the Act of 1708 from any process against person or goods to enforce imperial or local taxation. But secret trading by a Minister under cloak of his privilege has been treated as a fraud on the revenue.§

The Extradition Act of 1870|| does not include foreign Embassies as being within the "jurisdiction" of foreign States either so as to permit the extradition from England of persons committing crimes therein, or so as to concede to foreign Ambassadors any right to refuse or concede extradition according to the character of the offence alleged against any person who has sought asylum¶ therein, or to make the Embassy an asylum for English political offenders, and there is the strongest disposition on the part of English lawyers wholly to deny the existence of any Exterritoriality and to adopt the strong views of M. Laurent** on this subject. It has been usual to point out

* 38 Geo. III., c. 5, s. 46. Cf. Proceedings in Haiti, cutting off an Ambassador's water supply, after tender by him of the rates, on the ground that the landlord was liable and had not paid.

† See *Parkinson v. Potter*, 16 Q.B.D. 152; *Macartney v. Garbutt*, 24 Q.B.D. 368.

‡ Naturalisation Act (33 & 34 Vict., c. 14, s. 2).

§ *Att.-Gen. v. Thornton*, McClelland, 600.

|| 33 and 34 Vict., c. 52.

¶ As to asylum, *v. infra*. The U.S. in *Calvin Pratt's case* declined to recognize as ground of extradition an offence committed within the British special jurisdiction in Japan. U.S. For. Rel. (1875), pp. 817, 821. As to the American Law on Exterritorial Jurisdiction, see *In re Ross*, 140 U.S. 453.

** Vol. 3, c. 1.

or argue for an analogy* between the public ministers and the public vessels of foreign States. The latter subject was very carefully examined in England in 1876 by a judicial commission appointed to consider the reception of fugitive slaves on British warships.† The Commission included many men, all eminent in English opinion and some internationally well known.‡ The Commissioners were not unanimous on the question of Exterritoriality. Sir Robert Phillimore, Sir Henry Maine, and Mr. Bernard were disposed to accept the doctrine, but the Commissioners more steeped than they in the Common Law, rejected the doctrine as an unjustifiable expansion of a fiction; and whether a metaphor or a fiction, the phrase Exterritoriality will not bear straining.§ The analysis of the doctrine of Exterritoriality as applied to ships of war by Sir Alexander Cockburn,|| Sir James Stephen, and Mr. Rothery seems, if not absolutely conclusive (though I believe it to be so) against the acceptance of that doctrine in England, at least fatal to any effort to argue by analogy from Ambassadors to public vessels, or *vice versâ*, and any doubt as to the English view on the subject was set at rest in 1878, so far as relates to crimes committed on board of or by means of foreign vessels, by the Territorial Waters Jurisdiction Act, 1878 (41 and 42 Vict., c. 73), s. 2, which provides that "An offence committed by a person whether he

* *Parl. Papers of 1876*, C. 1516-1.

† Utterly rejected by Cockburn, L.C.J., p. xli., although maintained by Calvo and Phillimore, whose merits as writers lie rather in the variety of their information than the soundness of their conclusions.

‡ *E.g.*, Cockburn, L.C.J., Sir James Stephen, Archibald, J., Thesiger, afterwards Lord Justice, Rothery, Registrar of the Privy Council, Sir Henry Maine, Sir Henry Holland (now Lord Knutsford, and lately Secretary of State for the Colonies, then Law-Adviser to the Colonial Office), Mountague Bernard, and Sir Robert Phillimore.

§ Lindley, L.J., in *R. v. Keyn*, 1876, L.R. 2 Ex. D., p. 94.

|| See Maine's view in his *Lectures on International Law* (ed. 1887), p. 87.

"is or is not a subject of Her Majesty, on the open sea,
 "within the territorial waters (one marine league from the
 "coast measured from low water mark) of Her Majesty's
 "dominions, is an offence within the jurisdiction of the
 "admiral, although it may have been committed on board
 "or by means of a foreign ship, and the person who
 "committed such offence may be arrested, tried, and
 "punished accordingly."*

Any chance of international complications is obviated by s. 3, which forbids prosecution except by consent of a Secretary of State in the United Kingdom or the certificate of the Governor of a Colony. But no exception is made as to foreign public vessels.† As regards ships, then, England has complete jurisdiction within her territorial waters over all acts which by English Law amount to crimes, whether done on or by war-vessels or private ships; and such special immunities as are accorded to public vessels do not extend to them any Exterritoriality, or admit that a public ship is part of the soil of her flag. And in the *Sitka* case, in 1855, where Mr. Cushing declined to enforce a *habeas corpus* out of a State Court,‡ the true ground of decision was that, the question being the legality of the capture of a prize, the British Captain committed no infraction of Local Law in detention of the crew of the captured vessel; and as lately as 1886 a *habeas corpus* was issued out of the Courts of California to take out of a

* The Act declares the Law of England always to have been so. See *R. v. Dudley*, 14 Q.B.D. 275, *per* Coleridge, L.C.J.

† The English doctrine as to enemy's goods in neutral bottoms excludes any admission of Exterritoriality of private ships, and this view has prevailed since the Middle Ages. Even safe-conducts through the Channel especially excepted enemy's goods. The U.S. claimed such Exterritoriality as against the right of search (see Walker, *Science of International Law* (London, 1893, p. 124)), but resiled to some extent from their own theories in the *Trent* case (*Ib.* 131).

‡ *Opinions, U.S., Att.-Gen.*, vol. 7, p. 123.

Mexican public vessel a man said to have been illegally extradited.

The English rule appears to have been the same even before 1816, for a *habeas corpus* was in 1815 issued to a Spanish privateer to obtain the surrender of a captain of a vessel claimed as its prize.* The vessel was stopped by the Customs officers until the writ was obeyed. This case having caused some scandal, the *Habeas Corpus* Act of 1816 (56 Geo. III., c. 100) was made to cover the territorial waters adjacent to the coast, the previous doubt, if any, having been who could execute the writ,† the ordinary executive officer, the sheriff, being certainly incompetent outside the bounds of the county for which he was appointed, though Customs officers could act within the limits prescribed by the Hovering Acts. If the analogy between public vessels and public ministers holds, this writ would also go to an Ambassador. "Even the house of an Ambassador cannot be made an asylum for a guilty citizen, nor, it is apprehended, a prison for an innocent one."‡

Sir Henry Maine says "This fiction of Exterritoriality is applied by general consent to the residences and persons of Ambassadors and diplomatic agents in foreign countries."§

But this view, if accepted, will not justify what Stephen calls "the international wrong of preventing the local law from having its due course on a person subject to it."|| And it is very far from being the truth that the extent to which the fiction is applicable is fully agreed upon between the nations. The American case of *La Fontaine*,¶ when

* *Parliamentary Debates*, 1815, 1816, Vol. 32, pp. 542, 543.

† Cockburn, L.C.J., *Report* above cited, p. 31, concurs in this view as to liberation of a subject.

‡ *Opinions of U.S. Att.-Gen.*, vol. 1, p. 47, *per* Bradford, Att.-Gen.

§ *Lectures on International Law*, p. 93. || *Report*, 1876, p. lvii.

¶ (1831), 4 Cranch (U.S. Circ. Court), 173.

correctly understood, is no authority against the jurisdiction of the territorial courts over offences by the suite or domestics of a foreign Ambassador. He was a domestic of the Chargé d'Affaires of Sweden and Norway, and indicted for assault in a Circuit Court of the U.S. He pleaded to the jurisdiction, vouched a certificate from the U.S. Dept. of State of the position of his master as Chargé d'Affaires, and the Judiciary Act of 1789.* The indictment was quashed for want of jurisdiction, on the ground that jurisdiction, if any, was reserved by that Act to the Supreme Court.†

It would probably be conceded by all civilised States that, if the acts complained of would amount to a crime by British Law if done by a private citizen or British subject, the British Government would be justified in demanding the recall or dismissal of the Envoy and the disavowal of his acts, and in an extreme case, such as complicity in a plot to murder, that he should either be tried (if possible) in his own country or submitted to trial before a British Court.‡

The adoption of the Envoy's act would be an unfriendly act§ almost if not quite amounting to a *casus belli*. If this theory be true, Exterritoriality is excluded and the defence is one of privilege or nothing.

The usual, but not the only available, remedy in the case of crimes committed within an Embassy by one of the suite|| would be to hand the criminal over to the Ambassador

* Now U.S. Rev. Stat., s. 687. The Act of Anne was in substance enacted in the U.S. after the War of Independence. U.S. Rev. Stat., ss. 4063-5.

† In *U.S. v. Ravara* (1793), 2 Dall. (U.S.) 297, the defendant was only a Consul and therefore not within the Act of 1790. He was charged with sending anonymous letters with intent to extort money.

‡ This seems to be admitted by Grotius, *De Jure belli ac Pacis*, c. xviii. "*Si crimen sit atrocius et ad malum publicum spectet, remittendus erit legatus ad eum qui misit cum postulato ut eum puniat aut dedat.*"

§ *Factum hostilitatis*, see 5 St. Tr. 495.

|| Bluntschli, 148.

himself (*ut eum puniat aut dedat*), who could be held bound (if he had no criminal jurisdiction, which in modern times is never conceded to him in Europe), after a preliminary but extra-judicial investigation of the facts, either to send the delinquent home for trial or to deprive him by leave from home, or his own act, of his diplomatic character, and hand him over to the country in which he is residing and whose Laws he has broken.* To demand his recall for trial is but a means of saving the *amour propre* of the Sovereign whose agent he is.

Moreover, it is at least in some countries subject to the offender's own choice. For in England no foreign Envoy could be compelled, by any process known to English Law, to return to his own country.†

His Sovereign, by dismissing him, would deprive him of all diplomatic immunity from English Law.

If the Sovereign declined to do so, the Ambassador could be arrested on English process as having forfeited his privilege, and if he shewed an intention not to return to his own country this would probably be done.‡

It may, however, be said with accuracy that the Sovereign or Ambassador is not bound to waive his privilege if he can ensure that the offender will be remitted home for trial, and properly and impartially tried there; and in any case he ought to be,§ but is not, compellable|| to supply the witnesses and assist in the prosecution of offences committed by his *personnel* against subjects of the State which has received him.

A British Embassy abroad is not Extra-territorial in the eye of the English Law so far as to make crimes committed

* Manning (ed. by Amos), p. 111.

† See *Musgrove v. Chung Teeong Toy*, 1891, A.C. 272.

‡ See *Musurus v. Gadbán*, u.s. § *V. Calvo*, I., 672.

|| Refusal by the Dutch Ambassador to testify in an American criminal case has, in the U.S., been made ground for dismissal of the Minister.

therein extradition crimes : and no general Act exists making all crimes therein committed crimes triable in the United Kingdom.*

The only mode of obtaining for trial in the United Kingdom in those rare cases in which crime committed abroad by British subjects is triable at home, is to obtain surrender of the criminal, where constitutionally possible,† irrespective of Extradition Treaties. Where a Treaty does not exist or does not cover the case, the accused cannot invoke its aid or that of the Acts, and the offender cannot object to his trial on the ground of irregularities in the mode in which his surrender was effected. Such objection is only for the Government of the State from which he came.‡ Great Britain does not claim as a right of the Ambassador abroad,§ nor permit in those of Foreign powers, the exercise of any judicial authority to punish offenders within the ambit of the Embassy or to receive therein fugitives from the justice of the country to which the Ambassador is accredited.

The English Sovereign cannot delegate to his envoy abroad a power which he has not himself||, and the few cases in which Foreign envoys in England have exercised criminal jurisdiction were in the 17th century. When Sully, in 1603, was in London as Envoy Extraordinary of

* If offences other than treason, murder or perjury committed by Ambassadors abroad are cognizable here it is only by 42 Geo. III., c. 85 (which seems to apply only to the British Empire, *v. ss. 2, 5*), and if by that Act, then irrespective of the limits of the Embassy. Clunet, *Journ. Dr. Int. Privé* (1885), Vol. 12, p. 275; *Trafford's case*, 36 Ch. D., p. 600.

† *E.g.*, in France, Spain, and Portugal.

‡ *Sinclair v. Lord Advocate*, *Rettie, Jusiciary Cases*, Vol. 17, p. 38, *ex pte. Scott*, 9 B. & C. 446.

§ See Forsyth, *Cases on Const. Law*, 217.

|| *Fleta*, Bk. II., c. iii. 3 Laurent, p. 18. See Thomasius, *Diss. Jur.*, XVI. *de jure asyli*, 1142. The only jurisdiction other than statutory to try offences committed abroad (that of the Court of the Constable and Marshal) is now extinct.

Henri IV., one of his suite killed an Englishman in a nocturnal brawl outside the Embassy, and took refuge in the Embassy. Sully tried him summarily and on his own confession and sentenced him to death, and then sent him for execution to the Lord Mayor. He, however, did not see his way to execution without an English trial, so Sully sent the man to him to deal with according to English Law. The matter was ultimately settled by a Royal Pardon from James I., a clear claim of authority to deal with the offence.* Sully, if he could try could not execute,† nor could he send the man home, and resort to the *lex loci* became inevitable.

No English authority can be invoked for such a jurisdiction except a *dictum* of Lord Ellenborough in Picton's case.‡ “By the courtesy of nations if any King “should reside here he would have a right to exercise “criminal judicature in his own palace, but that is a species “of criminal judicature of the exercise of which this Court “would be jealous.” This, however, stands alone, does not authorize any delegation, and is inconsistent with the earlier and considered opinion of Sir James Marriott, who says,§ “with respect to such crimes and violences as may “be committed within the house of a public minister “ . . . if he can give an asylum to foreigners (a privilege “of which I doubt the justice and reciprocal utility, though “some have asserted it) he might *à fortiori* protect persons “of his own suite against a foreign jurisdiction, but certainly “he cannot exercise himself any jurisdiction, touching life “and limb upon them because he has no such commission, “and he is under a necessity from circumstances to deliver “them up of his own movement to be tried by the jurisdic-

* 1 Martens, *Causes Célèbres*, p. 331. 3 Laurent, 164.

† I have not traced in any English writer the case cited by Calvo I., 672. It is *pessimi exempli*.

‡ 30 Howell, *St. Tr.*, p. 899.

§ Forsyth, *Cases on Const. Law*, 517.

"tion of the country in which he and they are resident
 "inasmuch as the criminal being sent home could not by the
 "common law of this land be tried for crimes committed out
 "of the realm."

By 24 & 25 Vict., c. 100, s. 57, bigamy by a British subject, wheresoever committed, is felony triable in any county or place in England or Ireland, and the difficulties of any literal reading of the theory cannot be better illustrated than by taking the case of marriages in an Embassy.

The general rule of Law laid down by Lord Mansfield (in *Hall v. Campbell*, 1 Cowp. 208, 20 St. Tr. 323), "That the law
 "and legislative government of every dominion equally affects
 "all persons and all property within the limits thereof" is undoubtedly subject to exceptions. "It is not to be said
 "that Ambassadors and public Ministers are subject to the
 "whole body of the Municipal Law of the country in which
 "they reside. They belong in great part to the country
 "which they represent."* "It may be difficult however to
 "say, *à priori*, how far the General Law of the land should
 "circumscribe its own authority; but practice has established
 "the principle in several instances, and where the practice
 "is admitted it is entitled to acceptance and respect. It
 "has sanctioned the marriage of foreign subjects in the
 "houses of the Ambassadors of the foreign country to
 "which they belong. I am not aware of any judicial
 "recognition upon the point, but the reputation which the
 "validity of such marriages has acquired makes such a
 "recognition by no means improbable if such a question
 "was brought to judgment."† But this is a matter in
 which there may well be a conflict of Law, since, as Lindley, L.J., points out, States as well as jurists have different readings of International Law, and that is International Law in a

* Lord Stowell in *Ruding v. Smith* (1821), 1 St. Tr. (N.S.), p. 1064.

† Lord Stowell in *Ruding v. Smith* (1821), 1 St. Tr. (N.S.), p. 1066.

2 Haggard, *Consist. Rep.*, p. 386, note 1. *Pertreis v. Tondear*, *ib.*, p. 136.

State which its Courts or Laws declare to be so.* Such a marriage may be perfectly good in the country of origin or domicile, although not conformable to the *lex loci celebrationis*;[†] although the general rule is that a marriage good where celebrated is good everywhere else.[‡]

By the Foreign Marriage Act, 1892 (55 & 56 Vict., c. 23, which consolidates the earlier Acts, 4 Geo. IV., c. 91; 12 & 13 Vict., c. 68; 31 & 32 Vict., c. 61), marriages may be celebrated abroad in British Embassies, and if celebrated as provided by Statute, will in the United Kingdom be deemed valid even when one party to the marriage is a subject of the country within which the Embassy lies.§ A bigamous marriage celebrated at an Embassy would therefore be the subject of indictment in England and Ireland, if the offender were a British subject, but not more so than if it had been celebrated before a foreign official.

Could the offender be extradited from the country within which the Embassy was *or any other country* to answer for the crime?

(1.) The Courts of France have expressly declined to recognize as valid a marriage in the English Embassy between a Frenchwoman and an Englishman; || and in the American Embassy between a French woman and an American; ¶ and have annulled such marriages on the ground that they were invalid as not having complied with French Municipal Law.

* *Re Queensland Mercantile, &c., Agency Co.*, L.R. [1892] 1 Ch. 219 at 226.

† 1 St. Tr. (N.S.), p. 1068.

‡ Stowell on Foreign Jurists. "Principle either belongs to the Law of England of which they are not authorized expositors at all, or to the *jus gentium*, upon which the Courts of this country are as competent, and in the case of British subjects more appropriate, judges." *Op. cit.*, 1069.

§ See Fraser, *Husband and Wife*, II., 1,314, 1,539 (2nd edn.); Wharton, *Conflict of Laws*, s. 180.

|| *French c. Morgan*. Translated by Lord Fraser, *Husband and Wife*, II., 1,539. Clunet, *Journ. du Droit Int. Privé*, 1874, Vol. I., p. 71.

¶ *Tripet c. Bouvet*, *op. cit.*, p. 73.

(2.) Though pressed by the contention that the Embassy was Extra-territorial they laid it down that the fiction of Exterritoriality was confined to immunities consecrated by treaties for the benefit of diplomatic agents and did not extend "aux actes de la vie civile intéressant les "indigènes du pays auquel est accrédité l'Ambassadeur."

(3.) They expressly decided against the contention that as the marriage had been celebrated in the Embassy and after compliance with the formalities required by British Law it was valid,* and held that the maxim *locus regit actum* required compliance with the Law of France and not of the United Kingdom so far as related to the cases before them.

(4.) They also decided that the Chaplain was incompetent to marry a French subject in France.

(5.) And in the American case they rejected the plea that the woman had by her marriage become an American subject as a *petitio principii*, since the woman's change of nationality depended on the validity of the marriage.

In the cases above given it is clear that France would not concede Exterritoriality so as to legalise what would be unlawful by French Law or as a ground for extradition. But it flows from the decisions cited that in France a marriage of two British subjects within the Embassy, if duly celebrated, would be deemed as valid as if it had actually been celebrated on British soil.

This would seem to point to an admission either of a certain limited British jurisdiction within an Embassy abroad or of the doctrine of Exterritoriality as to acts done between British subjects in a British Embassy, *i.e.*, that the *locus regens actum* was in such cases English soil so far as

* This marriage would certainly be valid in England. 1839, *Lloyd v. Petitjean*, 2 Curtis, *Eccl. Cases*, per Dr. Lushington. Clunet, *Journ. du Droit Int. Privé*, 1885, Vol. XII., p. 659.

English Law is concerned, but that no International validity is claimed for such marriages.*

But if this were fully conceded, the foreign *bigamus*, even if his first wife and marriage were French, would not be liable to punishment in France, seeing that the marriage would make the wife British by nationality. The *bigama* being French, by virtue of her prior marriage, would, *ex hypothesi*, fall within the cases cited so far as related to the nullity of marriage, and if extraditable to England as an offender against the 24 & 25 Vict., c. 100, sect. 57, would be withdrawn from the forum where trial could be most conveniently had, *i.e.*, the country of the first marriage, and where alone its validity could be satisfactorily determined. While if the Embassy were Extraterritorial enough to make the bigamous marriage valid by English Law as *lex loci celebrationis*, but not Extraterritorial enough to justify surrender of the offender to the United Kingdom, the offender would slip between the gaps in the two jurisdictions. But even this limited jurisdiction, *i.e.*, as to marriage and crimes committed in an Embassy by British subjects, if conceded at all, is also liable to limitations. Unless there is an European consensus as to the rule, it cannot be a rule of International Law, and remains a delusive opinion or a pious aspiration of Jurists. Consequently, the rule of International Law, if any, is that the Municipal Law is competent as to ordinary crimes committed within an Embassy, even upon a member thereof, by persons not of the Embassy, whether the offender is or is not a subject of the State to which the Ambassador is sent.

Consequently, unless bigamy, the case cited (Daloz et Vergé on Art. 340, *Code Pénal*) is exceptionally treated by the Law of France, a bigamous marriage within a foreign

* See Fraser, *Husband and Wife*, Vol. II., pp. 1312, 1313. A foreigner who commits bigamy abroad with a French woman cannot be tried in France. Daloz and Vergé on Penal Code, Art 340, p. 548.

Embassy between any two persons, irrespective of nationality, would be cognizable in French Courts, and not subject-matter of extradition to the country of the Ambassador.

The alternative would be to hold that a marriage in an Embassy was wholly invalid so far as relates to French Law, unless in compliance with its dictates.

Perjury *within the French Embassy* here for a French proceeding would not be cognizable in English Courts, not on the ground of Exterritoriality, but on the ground that the perjury was not in a judicial proceeding known to the English Law; nor yet would it be a crime committed in French territorial jurisdiction, and even if it were triable there the offender could not be given in extradition. The general rule of English and American jurisprudence deems jurisdiction to be *primâ facie* territorial only.*

Extradition Acts and Treaties do not, by their definitions, recognize a British Embassy or even a British Consulate in Turkey or the East as being within the jurisdiction of the United Kingdom, and contemplate territorial jurisdiction† in the ordinary and not the diplomatic sense. In the case of *Calvin Pratt*, the U.S. declined to admit that an Englishman could be extradited from the U.S. for committing a crime within the jurisdiction of the British Courts in the so-called Extra-territorial British Colony in Japan, whose privileges it is proposed to abolish by the Anglo-Japanese Treaty of 1894.‡

Foreign Powers and Courts shew no disposition to recognize Exterritoriality except so far as relates to the office and necessary functions and the suite and family of the Ambassador, and so far as not to question the validity of notarial acts taken for use in the Ambassador's country

* See *U.S. For. Rel.* (1887), p. 781, for a collection of national laws on this head, and Forsyth, *Cases on Const. Law*, c. vii., note, p. 231.

† See *Opinions, U.S. Att.-Gen.*, Vol. XIV., p. 281.

‡ *U.S. For. Rel.* (1875), 817, 821.

(inasmuch as his intervention stamps with authenticity claims made by subjects of the country to which he is accredited), or civil proceedings not being judicial, conducted within the Embassy between persons who are all fellow subjects of the Ambassador, or at the least not subjects of the country to which he is accredited.

Crimes by Subordinates.

Calvo goes too far in saying that an Ambassador *cannot* deliver up members of his suite* for trial.

(1.) If they are subjects of the country to which he is accredited he *must* deliver them up in respect of crimes committed before engagement, or subsequently for crimes committed on their fellow subjects or any person outside the Embassy.

The reasons for this are clear, for they are not liable to the law of the Ambassador's country and they cannot evade their own law by engaging themselves to him.

(2.) By becoming servants they may to some extent but not wholly get rid of their prior allegiance.†

Calvo says they can be summoned before the local tribunals only by leave of the Ambassador.

If they are *not* subjects of the foreign country, they *can* by the Ambassador be discharged and deprived of any privilege or immunity.‡

(3.) If they *are* subjects of the Ambassador's country, the Ambassador can dismiss them unless they are of the *personnel officiel*, in which case the rule laid down in Cabrera's case applies.

* See Bluntschli, s. 145, who limits it to persons resident in the Embassy-house, to family, employés, suite, and servitors.

† See French Code, Art. 810, *Napper Tandy's Case*, 27 Howell St. Tr. 1191.

‡ *U.S. v. Benner* (1830), 1 Baldwin, 240; Martens, *Guide Diplomatique* (4th ed.), 94.

It may be that the Ambassador would be entitled to confine such an offender within the Embassy,* though this is denied: *non posse legatum jus carceris exercere in aedibus intuitu subditorum domini territorii* (Thomasius, 1142), but he certainly could not arrest him outside, and if the aid of the local authorities were invoked it could only be in respect of some crime with which they were competent to deal, and to invoke their aid would be, as was said in France,† to admit their jurisdiction or to waive the privilege, if any.

So far as the United Kingdom is concerned it would be impossible to surrender to his own State,‡ by way of extradition, a member of a Foreign Embassy who committed a crime either within or without his Embassy: even though Calvo is of opinion that it is the duty of the Ambassador in such a case to demand the extradition of the offender. For he has forgotten that in Constitutional countries accused persons have rights, and the accused cannot under English Law without his own consent be handed over to the Ambassador or detained in prison to await the directions of the Ambassador.§ Unless properly deprived of his diplomatic privileges he would, in such a case, be entitled to release on a *habeas corpus*, even if arrested at the suit of his own Ambassador. This cannot be better illustrated than by the case of Jose de Cabrera. The man was arrested on two charges of uttering a forged cheque. He was Secretary to the Spanish Legation, and though the Spanish Minister

* *Habeas Corpus* would go in such a case if he did it in England.

† *Michelschenkoff's Case*, Calvo, I. 651. Another case arose in 1888, when a Frenchman shot within an Embassy another Frenchman who was porter of the Embassy.

‡ This claim seems to have been based on the early Roman practice of handing over to the Sovereign of a *nuntius* any Roman who had injured him (Thomasius 1,669).

§ Cf. the case of the foreign Jew, in 1771, *Cal. St. Papers (Home Office)*, Ed. Roberts. No. 973.

withdrew his protection, claimed that as Secretary he could not be deprived of his privilege by the Minister, or by anyone but his Sovereign. He was detained in custody on two warrants for two distinct charges. The first ordered his detention subject to the direction of the Spanish Minister upon a charge of uttering forged cheques, until the will of his Sovereign was known, whether he would order him to Spain for trial, or to be delivered up to the justice of Pennsylvania. The second alleged a second offence and the withdrawal by the Minister at the *request* of Cabrera of the protection of the rights of Embassy. An indictment was found for the second offence, but a *nolle prosequi* had been entered on representation of his character and privileges. Cabrera sued out a *habeas corpus* from the United States Courts. They decided that they had no jurisdiction to order his release, as he was in custody under the authority of Pennsylvania for an offence against its Laws.*

Mr. Justice Washington held that *until removal by his Sovereign* a Secretary of Legation could claim not to be made amenable on a civil or criminal charge.† Any person whom the Ambassador could discharge without reference to his Sovereign could no doubt be deprived by him of privilege. But the learned Judge is probably right in saying, and he only says, that the Ambassador cannot *mero motu* withdraw the privilege from subordinate diplomatic officers whom he cannot dismiss; although it is arguable that the U.S. could have given the man his papers and on the expiry of the time limited for departure have prosecuted him.‡

* *Ex pte. Cabrera*, 1 Washington (U.S.), 231.

† The U.S. had in 1790 passed a Law nearly in the terms of the English Act, which avoided all process against the person or effects of a Foreign Public Minister. See U.S. Rev. Stat., ss. 4063, 4064, 4065.

‡ See *Musurus v. Gadban* [1894] 1 Q.B. 533 2 Q.B. 352.

A serious point was raised, but not settled, on the return to the *habeas corpus*; since Cabrera was directed to be held "to the order of the Spanish Minister" who was also the person aggrieved by Cabrera's offence. If Cabrera preferred to be tried in America the Ambassador could certainly not insist on his being sent home.

There remains the case where one of the Ambassador's household commits a crime within the house.* In 1784 (before the Constitution of the U.S. was framed) one De Longchamps was indicted and convicted in Pennsylvania on an indictment which charged:

(i.) An assault on the Secretary of the French Legation in the house where he resided "under the protection of the "Law of Nations and this commonwealth."

(ii.) An assault on the same person in the street of "Philadelphia in violation of the Law of Nations, against "the peace and dignity of the U.S. and of the common-wealth of Pennsylvania."

The Pennsylvanian Courts held that the first count was good on the ground that the *jus gentium* was part of the Law of Pennsylvania, "adding that it was to be collected from "the practice of nations and the authority of writers;" on which it may be observed that the practice is conflicting and the authority of writers of varying weight, and that it is necessary to prove such practice to be not only certain and consistent but also to have been adopted as a principle of Municipal Law. But they also held that the offender could not be surrendered to France on the particular demand; although asserting a power to extradite in a proper case, as to which they were undoubtedly wrong; which makes against the Extra-territorial character of the Embassy, although the Chief Justice spoke of it as a foreign domicile to which the Law of Pennsylvania did not extend

* 1 Calvo, 669; Bluntschli, 145.

(1 Dallas, U.S. III., 1st ed., *Re De Longchamps*), and secondly that he could not be detained indefinitely until he had made such reparation as would satisfy France.

If the Law of Nations, which has been defined as "that portion of public morals which it has been found expedient to apply to communities for the purpose of regulating the intercourse of separate States,"* was part of the Law of Pennsylvania, that law provides no definite punishment† for the offence in question, and it is doubtful whether the offence in question could be tried *jure gentium*, like piracy, as the offence was certainly not in the Admiralty jurisdiction, and was *ex hypothesi* not in the Common Law jurisdiction, nor in any jurisdiction created by Statute. (This decision was before the U.S. Const. was framed.) The actual punishment given was such as was proper to the second charge of an offence undoubtedly against the Common Law, and the only offence of which the jury at first proposed to convict.

And the exemption from local jurisdiction being one that could be waived, it was competent for the Common Law Courts to try both charges as Common Law offences, if the aggrieved Secretary invoked their jurisdiction.‡ For thus much alone can the case be clearly vouched: as an authority for these three propositions:—

(1.) That an offence committed within an Embassy is cognizable (either *jure gentium* or by Municipal Law) in the country where the Embassy is situate, and that the *accused cannot protect himself by any plea of Extra-territoriality*.

(2.) That the offender cannot be handed over after conviction to the Sovereign of the Minister in whose residence the offence has been committed, *i.e.*, that the accused has

* *Edinburgh Review*, 1825, Vol. 42, p. 105.

† In 1790 the U.S. defined the punishment for this and like offences. See U.S. Rev. Statt., sect. 4,062.

‡ See *U.S. v. Ortega* (1826), 11 Wheaton 467.

not committed the offence within a foreign jurisdiction in such a sense as to make him a fugitive offender.

(3.) That, even if the offence is to be determined by the Law of Nations, its punishment must be according to the Municipal Law, and be certain and definite, which, by the way, upsets the analogy used by Chief Justice M'Kean who compared the offence to contempt of Court, for which the punishment need not be definite, and usually lasts indefinitely until the contempt is purged by submission and apology.

No prosecution under the Act of 1708 has been instituted in England in respect of the execution of criminal process, nor is it absolutely clear that that Act applies to Criminal proceedings. The writs and processes there mentioned are certainly such as directly touch the person or goods of the Ambassador, and such as in their usual consequences would have this effect.* But in the United States several trials have taken place in which the right to interfere with foreign diplomatists under colour of criminal process has been discussed. In 1808 Liddle,† a constable, had arrested for supposed crime a servant of De Lima, Secretary to the Spanish Legation, and in ignorance of De Lima's status, and in belief that he intended a rescue, had struck the latter. He was tried for the assault and held to be guilty, in spite of his ignorance of fact. This decision does not seem consonant with reason. The constable had no *mens rea*, acted as he believed in maintenance of the law, and could not have meant to insult the Spanish nation, and his act seems to fall within Mr. Field's suggestion that a diplomatist may be prevented from committing, even though he may not be punished for committing, a breach of Local Law.

* *Musurus v. Gadban*, L.R. [1894] 2 Q.B. 352, at 356.

† *U.S. v. Liddle*, 2 Washington's Reports, 205; and see *Cal. St. Papers (Home Office)*, Ed. by Roberts. 1771. Nos. 682, 763, 764.

In 1826 one Ortega* was tried and convicted for offering violence to the Spanish Chargé d'Affaires in the U.S. In 1830 Benner,† a constable, was prosecuted for arresting the Danish Minister. The Court laid down that "the privileges of a foreign Minister are not personal, "nor is their violation punished as an injury to himself, "the immunity from arrest is the privilege of the Sovereign "who sends him, the injury is done to him in the person of "his representative." But the Court added, "Though the "person of a Minister is inviolable, yet he is not exempted "from the Law of Self-defence: if he unlawfully assaults "another the attack may be repelled by as much force as "will prevent its continuance or repetition."

In other words, even if foreign diplomatists are not amenable to the Territorial Law for acts constituting crimes by that law, everything may be done to prevent their commission of those acts which would be lawful against a subject, except to arrest them for purposes of incarceration or punishment.‡ Probably the proper course in case of a serious crime by a person connected with a foreign Embassy is:—

- (1) To lay the evidence before the Public Prosecutor :
- (2) For the Crown thereon to demand surrender or recall for trial : and,
- (3) If the accused will not return on recall, to arrest him :
- (4) If a private prosecutor commences criminal proceedings, to enter a *nolle prosequi*, but that only—
 - (a.) On the application of the foreign Sovereign ;
 - (b.) On an undertaking to recall and try the offender.

* See 11 Wheaton's *Reports*, p. 467, and a very valuable note as to the U.S. jurisdiction. But it is not there decided what proceedings can be taken in the Supreme Court against foreign Ambassadors.

† *U.S. v. Benner*, 1 Baldwin's *Reports*, pp. 234, 239.

‡ *V. Bluntschli*, s. 144.

Bluntschli (s. 147) lays down that it is the right of the receiving State to have an adjudication by the sending Government of the liabilities—Civil and Criminal—which have accrued during the “Exterritoriality.”

W. F. CRAIES.

[*Note*.—On some of the questions discussed above by our valued contributor, reference should be made for a series of criticisms written for this *Review* from the point of view of International Law, in connection with the *Report* of the Fugitive Slaves Commission, by Sir Travers Twiss, D.C.L., Q.C., in *Law Magazine and Review*, Nos. CCXIX., CCXX., CCXXIII., CCXXIV., for Feb. and May, 1876, and Feb. and May, 1877.—ED.]

IV.—THE FUNCTION OF EVIDENCE IN ROMAN LAW.—IV.

Presumptions.

IT is characteristic of a system like the Roman, in which rules of evidence had not been formulated with the minuteness of English Law, that a large part of the law of evidence was occupied by presumptions, which operated as a kind of mechanical and self-acting proof,* relieving the parties from the necessity of adducing oral or written testimony. Where the production of two witnesses was an irreducible minimum, the use of presumptions was an obvious means of preventing, in many cases, a failure of justice. They may also have arisen from the distrust of the *judex* by the prætor, just as in all probability many

* The tendency in modern English Law to extend the theory of presumption was noticed by Mr. Justice Mathew in a case in 1889. “The provisions of this “Act (41 and 42 Vict., c. 49) are highly penal. They substitute, as is the “modern fashion, presumption for evidence.” *Reg. v. Justices of Kent*, 24 Q.B.D. 185.

English fictions had their origin in the wish of the Judges to force the jury to come to a particular conclusion, *e.g.*, to find for the plaintiff in a claim by prescription on the ground of a fictitious lost grant. The comparative importance of presumptions is shewn by the numerous books, or parts of books, on the subject produced by commentators on Roman Law, while England appears to possess only two.*

Præsumptio† and *conjectura*‡ (used as synonymous by Mantica and others) were originally rhetorical terms. The former was the equivalent of the Aristotelian *πρόληψις*. Both the substantive and the verb are used in the *Corpus Juris*. An instance of the latter is an extract from Ulpian *ad Edictum*, where it is said that it is commonly presumed (*vulgo præsumitur*) that only the *dominus litis* can take the oath *in litem*, a rule altered by Papinian to the effect that such an oath could only be taken by one who sues in his own name.§ As a medieval law term *præsumptio* was used in a sense approaching one of its modern non-legal uses, as meaning a violent action.||

In Roman Law the analysis of presumptions was not complete. The well-known division into *facti* or *hominis*, *juris*, and *juris et de jure* was the invention of the commentators, as was the concurrent division into violent, probable, and slight.¶ There is no definition of *præsumptio* in the

* Matthews (as affecting real and personal property), 1827; Best (general), 1844.

† *Conjecturalis causa* is used by Cicero, *Top.*, 24, and occurs in *Auctor ad Herennium*.

‡ Quintilian, ix., 2, 16.

§ *Dig.* xii., 3, 7.

|| As in *Leges Henrici Primi*, c. 11.

¶ The latter division, like that of negligence in English Law, is of little practical importance, as any one presumption may by a change of circumstances become another. As to the former division, the presumption *juris et de jure* is really a rule of substantive law, the *hominis* or *facti* is not entitled to be called a presumption at all. It is, to use the language of Mr. Justice Buller in the trial of Donnellan, "the presumption which necessarily arises "from circumstances."

Corpus Juris, but probably a Roman jurist would have accepted the definition of the French Code Civil, § 1349, *les présomptions sont des conséquences que la loi ou le magistrat tire d'un fait connu ou inconnu*. The connection of a theory of presumption with the law of evidence is shewn by the title of the Digest in which much of the law is contained, *De Probationibus et Præsumptionibus*.^{*} This title contains only two examples of presumption, both arising in contract. The production of a cancelled *chirographon* raised a presumption, rebuttable by the creditor, of the satisfaction of the debt.[†] There was a presumption in favour of the creditor in a *condictio indebiti* if he acknowledged the receipt but said the money was owing.[‡] Almost all the other instances of presumption in Roman Law are found in the law of succession, § especially where it became important to determine which of two persons in a case of apparently simultaneous death in shipwreck or battle survived the longer. Where there was no difference in age, one was not presumed to have survived the other.^{||} This was also the case where a parent and a child above the age of puberty perished together,[¶] or a husband and wife.^{**} But where the child was under the age of puberty, it was presumed to have died first.^{††} In certain cases a presumption was made rather on grounds of humanity than in accordance with strict law. If a mother and a son above the age of puberty perished together in shipwreck, the son was presumed to survive.^{‡‡} Where a father and son were killed in battle, the son was presumed to have

^{*} *Dig.* xxii., 3.

[†] *Dig.* xxii., 3, 24.

[‡] *Ib.*, 25.

[§] Another remarkable one in contract was that in the sale of a slave his character was presumed from his nationality, *Dig.* xxi., 1, 31, 21.

^{||} *Dig.* xxxiv., 5, 18, *pr.*

[¶] *Dig.* xxxiv., 5, 16.

^{**} *Ib.*, 8, 9, 3, and 17.

^{††} *Ib.*, 23.

^{‡‡} *Ib.*, 22.

survived the father in order that the mother and not the agnates might succeed to the father's estate.* The reverse was the case where the father was a freedman, in order that the patron's rights of succession might be preserved.† A *fideicommissum* attached on condition of the trustee dying without children. If he and his child perished at the same time, it was presumed in favour of the trust that the child died first.‡ In accordance with the favour shewn by Roman Law to freedom,§ it was held that if a female slave were promised freedom on condition of her first child being a boy, and she became the mother of twins, a boy and a girl, it would be presumed that the son was born first.|| In reference to freedom, the counter-presumption was to be taken into consideration, viz., that in favour of the status in which the person whose freedom was in question occupied at the time of the commencement of litigation. In a dispute as to the source of a wife's property, it was presumed, on the authority of Quintus Mucius Scævola, to have come from the husband.¶ This presumption was called by the commentators *præsumptio Muciana*. Presumptions were almost wholly the creation of the jurists,** as in England fictions were the creation of the judges; the only instance of anything like a recognition of them in an imperial constitution appears to be in one of Justinian's, allowing

* Dig. xxxiv., 9, 1.

† *Ib.*, 9, 2.

‡ Dig. xxxvi., 1, 17, 7.

§ E.g., *quoties dubia interpretatio libertatis est, secundum libertatem interpretandum est*, Dig. l., 17, 20. The same principle is continually repeated in other passages of the Digest.

|| Dig. xxxiv., 5, 10, 1.

¶ Dig. xxiv., 1, 51.

** This is not inconsistent with what was said above as to presumptions arising from the distrust of the *judex* by the *prætor*. Much of the judge-made law of Rome was really jurist-made in the first instance, then adopted and sanctioned by the Judge.

the widow of a soldier to act on the presumption of his death and marry again if nothing had been heard of him for a year after the end of the expedition on which he had been engaged.* It should be noticed that some of the English rules as to presumptions, nominally derived from Roman Law, are really not to be found in the texts in their modern form. For instance, *omnia præsumuntur rite et solenniter esse acta* does not occur in those words, although similar ones appear in more than one place.† The “maxims” of English Law as to presumptions are comparatively few in number; the same result has been attained by a different process, the theory of irrebuttable fictions. The line of division between a presumption and a fiction is sometimes a narrow one; it is a matter of historical rather than of practical interest which of the two a particular legal system uses as a means of evidence, or perhaps, to put it more strictly, as a means of dispensing with evidence.

The Roman Law of presumptions was followed and extended by the Canon Law.‡ The term *violenta* or *vehemens præsumptio* seems to have been invented by the Canonists. As in other parts of the system, the illustrations are often derived from Scripture. Thus an example of *vehemens præsumptio* is the action of the mother in the judgment of Solomon. The rule *qui ex duobus illatis alterum negat reliquum affirmare præsumitur* is illustrated by St. John, VIII., 48: “Say we not well that thou art a

* Nov. cxvii., 11.

† The nearest approach is *Sciendum est generaliter quod si quis se scripserit fideiussisse videri omnia solenniter acta*, Dig. xlv., 1, 30. The same principle occurs in Dig. xxii., 3, 5, 1. Latin maxims as adopted in English text-books have frequently only a pecious resemblance to those actually used in the *Corpus Juris*. Thus the well-known English rule *falsa demonstratio non nocet quum de corpore constat* is a combination of *falsâ demonstratione legatum non perimi* (Inst. ii., 30, 20,) and *nihil facit error nominis quum de corpore constat* (Dig. xviii., 1, 9, 1.).

‡ Decretals, ii., 23, *De Præsumptionibus*.

Samaritan and hast a devil?" Jesus answered, "I have not a devil." A maxim very like that called by logicians the rule of the uniformity of nature is *ex præteritis præsumitur circa futura*. This is not, however, of universal application. One guilty of incontinence in youth, especially if he be *litteratus*, is not necessarily to be presumed to be so in age.

By secular jurists a considerable amount of writing was devoted to the subject. Among others may be mentioned Mantica,* Alciatus,† Mascardus,‡ Menochius,§ Voet,|| and Matthæus the younger.¶ By Mantica *conjectura* and *præsumptio* are identified and analysed in the same way. Voet defines *præsumptio* by *conjectura*.** Alciatus lays down three rules which are in general agreement with those of other writers. They are as follow:—*Prima regula sit quod qualitas quæ naturaliter inest homini semper adesse præsumitur. Secunda principalis regula est quod mutatio non præsumitur. Tertia principalis regula est quod semper sit præsumptio in meliorem partem*. Many curious cases from Menochius, Zacchias, and others, are to be found in Hubback on the Evidence of Succession. Farinaccius also contains much on the subject, laboured with his usual minuteness. In Scotch Law presumptions have been the subject of legislation. A well-known instance is the Act 1690, c. 21 (repealed in 1803), passed in consequence of the increase of infanticide. Under its provisions the jury were to be directed to receive as presumptions of the guilt of the panel certain facts, *e.g.*, that the panel had concealed her

* *De Conjecturis Ultimæ Voluntatis*. Lyons, 1590.

† *De Præsumptionibus Tractatus*. Works, vol. iv., 575, Frankfort, 1617.

‡ *De Probationibus*. Frankfort, 1619.

§ *De Præsumptionibus*. Geneva, 1724.

|| *Ad Pandectas*. 6th Ed., The Hague, 1734.

¶ *De Probationibus*. Leyden, 1678; Groningen, 1739.

** *Præsumptiones sunt conjecturæ ex signo verisimili ad probandum assumptæ, vel opiniones de re incertâ necdum penitus probatâ*. *Ad Pand.*, xxii., 3, 14.

pregnant condition. It was under this Act that, as readers of the *Heart of Midlothian* will remember, Effie Deans was condemned. The recent Presumption of Life Limitation Act, 1891, has no counterpart in legislation relating to England or Ireland. In one or two English cases presumptions have been distinctly based by judges on Roman originals. Thus, in *Hooley v. Hatton*,* Lord Bathurst explained the English presumption against double portions by reference to the passages in the passages of the Digest† where a similar rule is contained, though not under the express name of a presumption. In fact, at any rate in one of the passages, the rule does not attain the dignity of a presumption; for the claimant of a repeated *legatum* of a *quantitas*, not a *corpus*, in the same instrument could only succeed in his claim by *evidentissimæ probationes* that the double gift was intended by the testator.‡ If the gift were of a specific thing, it could be claimed only once if the gift were in the same instrument, but twice (*i.e.*, the thing itself in addition to its value) if the gift were repeated in different instruments.§ In some other cases English Law appears to recognise a presumption where Roman Law proper did not, however it may have been extended by the commentators. For instance, erasures, alterations, or interlineations in a will are presumed to have been made after execution, though this presumption may be rebutted by evidence. In Roman Law they seem to have been regarded as evidence of an intention to revoke the will.||

Registration.

The low Latin *registrum* is a corrupt form of *regestum*, which is found in the plural participial form in both the

* 1 Brown, Chancery Cases, 390; 1 Dickens, 462 (1773).

† xxii., 3, 12, *et al.*

‡ Dig. xxx., 34, 3.

§ Dig. xxx., 34, 1 and 2.

|| Cod. vi., 23, 12.

Digest and the Code. In the former, it is used in a purely untechnical sense to mean earth thrown on the land of a neighbour; * in the Theodosian Code and the Introduction to the Code of Justinian† it bears the meaning of entering on the public records. The substantival use of the participial form is later than the *Corpus Juris*. The nearest approach in classical Roman Law to any technical term for registration is *insinuatio*. A general system of registration of property existed in the Roman Empire. There was no general system of registration of documents or of persons, but by laws passed at various periods certain documents, both public and private, and certain persons, were required to be registered. Little or no principle is discoverable in the legislation; it only appears that as occasion demanded certain kinds of documents were to be entered in the public records.‡ The principal public register offices attached to the central administration were the *sacra scrinia* or *scrinia palatii*, the plural form being no doubt used because the *scrinia* were of four kinds, classed by the Theodosian Code and the Code of Justinian as *memoriae*, *epistolarum*, *libellorum*, and *epistolarum Græcarum* or *dispositionum*.§ The object of registration in these *scrinia*

* *Dig. vii.*, 4, 24.

† *Summa Reipublicæ*, § 4.

‡ For such records *acta* is the usual word. *Tabulae* occurs in *Dig. xlviii.*, 4, 2, but with the addition of *publicæ*. *Gesta* is used in *Cod. iv.*, 3, 1, and other texts. Cicero uses *publicæ tabellæ* (*pro Archid.*, iv., 9), and *quæstionis tabellæ* (*pro Cluentio*, lxx., 184), the latter only for criminal records.

§ *Cod. Theod.*, vi., 26; *Cod. xii.*, 19. The title of the Code contains numerous and minute regulations as to the duties and rank of the registrars called there in *sacris scriniis militantes*, in other places, *tabularii*, *referendarii*, *chartularii*, *librarii*, *insinuatores*, *pragmaticarii*, *numerarii*, *actuarii*, *scrinarii*, and other names, according to their duties. The principal registrar was *primiscrinii*, *Cod. xii.*, 60, 3, or *primicerius*, *Cod. xii.*, 21, 1. *Subscribendarii* and *diurnarii* occur only in *Cod. Theod.*, viii., 4, 8, 1. According to Marcellus, *scripturarius* was the old name of *tabularius*, no doubt because the earliest registration of real property was of the interests in the State lands (*scriptura*).

was to give validity to the documents registered* (they apparently registered only documents, not title), and so avoid in a greater or smaller degree the difficulties which would arise from the production of witnesses to prove them. It was thus from one point of view evidence, from another a substitute for evidence. The other important register office was the *Censuale Officium* or *Censuale. Tabularium*, which under the Republic was a generic name for any registry of public documents (such as the *ærarium*), appears to be used in the *Corpus Juris* for a provincial or private depositary of documents, such as documents of title to slaves and land.† *Ministerium chartularum* occurs only in the Theodosian Code.‡ *Archium* (v. l., *archivum*) and *grammatophylacium* occur only once in the *Corpus Juris*, and then in relation to a *præses* not undertaking public business.§

The principal public documents which were registered were imperial constitutions, petitions, judgments, and public contracts, together with abstracts or *breves* of the original documents.|| It is not always clear in which *scrinium* any particular document was registered, and there is little or nothing laid down as to the effect of an unregistered document. Probably it was not void, but the facts recorded in it must have been proved by ordinary evidence. There appears to be no text enforcing the

* *Gesta quæ sunt translata in publica monumenta habere volumus perpetuam firmitatem*, *Cod.* vii., 52, 6.

† *Dig.* xxxii., 92 (a question of construction of a *prælegatum* where there was a *tabularium* on one of the *fundi* devised).

‡ vii., 22, 8.

§ *Dig.* xlviii., 19, 9, 6. The custody of instruments is a matter hardly falling within the subject of the present article, but it may be noticed that as between *heres* and *legatarius* the former had the custody of instruments of title to the land devised, giving security to the latter to produce them on demand, *Cod.* vi., 42, 24.

|| *Breves* are frequently mentioned in the Theodosian Code, but not in the *Corpus Juris*. The word appears never to be used in the neuter gender as it came to be later.

enrolment or registration of constitutions,* but it is obvious from the legislation of Theodosius and Justinian that such registration was usual. A constitution of Gratian, Valentinian, and Theodosius, in 383, enacted that no more than six solidi were to be taken for the registration of *litteræ* or general constitutions in any province.† A constitution of Justinian, in 538, enacted that certain constitutions affecting the law of wills were to be valid two months after registration in the provinces.‡ Certain public officials (*curiales* and *cohortales*) were not to be sued without the Emperor's permission by *litteræ* registered in the Court of the *præfectus prætorio*.§ Constitutions, as far as they were *litteræ* or *epistolæ*, would no doubt be registered in the *scrinia epistolarum*. As to *mandata*, the title *De Mandatis Principum* in the Code implies that they were to be in writing, but says nothing about registration.|| The similar title in the Novels enacts that the particular constitution was to be registered in the provinces and a copy sent to the cities of the province, but makes no provision for general registration.¶ *Pragmaticæ sanctiones* were registered with the *præfectus prætorio*. Registrars of petitions (*libelli*), whether of appeal or otherwise, were called *libellenses* or *a libellis*,** and the registration was no doubt in the *scrinia libellorum*. Registered judgments were of higher authority than unregistered.†† Public contracts

* The titles *De Constitutionibus Principum*, Dig. i., 4, *De Legibus et Constitutionibus Principum et Edictis*, Cod. i., 14, speak of promulgation, but not of registration.

† Cod. xii., 63.

‡ Nov. lxvi.

§ Nov. cli.

|| Cod. i., 15.

¶ Nov. xvii., 16.

** Cod. vii., 62, 32; xii., 19, 14. One of their most important functions was to consider the petitions for admission to the rank of *eques*. Greenidge, *Infamia*, p. 97.

†† This seems to be the effect of the text cited above from Cod. vii., 52, 6, as it is contained in the Title *De Re Judicata*. Canon Law allowed less authority to the *res iudicata* than did Roman, for proceedings in a secular court were not even evidence, Decretals, ii., 1, 4.

(συμβολαῖα) were registered in the provinces in the same manner as constitutions.*

The principal instances of registration of private documents were wills, instruments of ownership of vessels, mortgage, emphyteusis, manumission, and adoption. *Insinuatio* of private documents is said to have arisen from a wish to enable heirs to ascertain the liabilities of the estate of a deceased person.† In the time of Ulpian a will was deposited, and no doubt registered, in the temple of Vesta, where it was not committed to the charge of the principal *heres*.‡ At a later date the registration of a will was enforced by Arcadius and Honorius.§ It was to be registered in the city in the *Censuale Officium*, an office presided over by the *Magister Censuum* or *Census*, and probably unconnected with the office of the census for purposes of revenue. It was also probably not one of the *scrinia*.|| In provincial towns wills were registered in the *tabularium* with the *defensores civitatum*.¶ The cost of registration was a privileged debt.** A public nuncupative will was entered on the records of the Court, the Emperor and the law being regarded in such a case as sufficient witnesses.†† The only authority for there being anything like a probate copy of a will is Paulus, who says that the will was, after being opened and read, to be deposited with other public documents in the *archium* and sealed with an official seal, so that a copy might be had when required.‡‡ It appears that there must have been some kind of registration of the name of a ship, together with the name of

* *Cod.* xii., 64.

† *Cod.* viii., 54, 30.

‡ *Dig.* x., 2, 4, 3.

§ *Cod.* vi., 23, 18.

|| The *Magister Census* had certain jurisdiction over students, *Cod. Theod.*, xiv., 9, 1.

¶ *Nov.* xv., 3.

** *Cod.* vi., 30, 22, 9.

†† *Cod.* vi., 23, 19.

‡‡ *Sent.* iv., 6, 1.

her owner and her tonnage, for fraud in such matters was punishable by confiscation of the vessel.* This is confirmed as to Italian ships by the statement of Tacitus that in the year 58 provincial vessels were relieved from registration.† Captains of ships were bound to register the kind and weight of imported corn.‡ The registration of mortgages was permissive, not imperative,§ and only to the extent of giving priority to an instrument executed in the presence of a notary or three witnesses over one executed secretly.|| One of the modes of admission of a new *emphyteuta* was by deposition of the instrument of admission with the *magister censuum* in the city, elsewhere with the *præses provinciæ* or *defensor civitatis*.¶ These were no doubt, from the term used (*depositio*), registered in the *scrinia depositionum*. Gifts were, by a constitution of Justinian (superseding legislation by previous Emperors), to be registered with the *magister censuum*, the *præses*, or the *defensor*, if the amount given were above five hundred *solidi*.** Gifts to or by the Emperor were exempt from this rule, and were valid without registration up to any amount.†† Leo the Philosopher afterwards altered the law, making a gift over five hundred *solidi* valid if simply in writing, up to or below that sum if attested by the oral evidence of three witnesses.‡‡ The particular form of gift known as *donatio propter nuptias*, if made pursuant to a *dotale instrumentum*, must have been registered, and this might be

* *Cod. xi.*, 3.

† *Ann. xiii.*, 51.

‡ *Cod. xi.*, 22, 1.

§ An exception is perhaps to be found in the *obligationes alimentariæ*, or charges on municipalities existing from Nerva to Diocletian for the purpose of providing for the children of the poor.

|| *Cod. viii.*, 18, 11; *Nov. lxxiii.*, 1. Whether mortgages were registered in the census seems uncertain.

¶ *Cod. iv.*, 66, 3.

** *Cod. viii.*, 54, 34; *Nov. xv.*, 3.

†† *Nov. lii.*

‡‡ *Leon. Const. 1.*

done either before or after marriage.* Adoption might, by a constitution of Anastasius and a later one of Justinian, take place before a magistrate, and a record of the proceedings was registered.† The manumission of a slave, where the act took place in a church, was recorded in a public document.‡

During the Republic there was a quinquennial census, in which all citizens were enrolled according to the amount of their property, both moveable and immoveable. This census was made for the last time under Decius in 251 and was formally abolished by Constantine in 313. After the abolition of the old Republican census, the provincial census introduced by Augustus was (in the opinion of Huschke and others) extended to the whole Empire. Whether this be the truth or not, there was at any rate at the time of Justinian a census as an administrative basis for the collection of the revenue. Both moveable and immoveable property seem to have been registered. *Tributa quæve præterea pro prædiis aut moventibus dari et reddi necesse est* are the words of Quintus Mucius Scaevola.§ The registration of immoveable property is mentioned by Cicero.|| It is as to the latter that most information is to be found. It was under the charge of *censuales* or *censitores*, responsible for its accuracy, and it was registered by the *formula censualis* in the *censuales libri*, possibly (but probably not) kept in the *censuale officium*.¶ The land was registered according to its metes and bounds and the state of its cultivation,** its value being proved by production of

* *Cod.* v., 3, 20, 1.

† *Inst.* i., 11, 12; *Cod.* viii., 48, 11; *Cod.* viii., 49, 5.

‡ *Cod.* i., 13.

§ *Dig.* xxxiii., 2, 32, 2, where *moventibus* is taken by Marquardt and others as equivalent to *mobilibus*.

|| *Magnum agri modum censer* (*pro Placco*, xxxii., 80).

¶ The *formula censualis* ceased under Diocletian, but the *censuales* were still members of the *censuale officium*.

** *Dig.* l., 15, 4; *Cod.* xi., 57; *Nov.* xvii., 8.

codices or accounts.* Both public and private lands were so registered. The unit of registration was the *caput* or *capitatio*, on which the *tributum* and other charges were based. Registration was a condition precedent to the alienation of immoveable property.† The evidence of the census was preferred to that of witnesses.‡

Registration of persons was either on the census or not. While the old form of census existed, a slave or a *filius-familias* might be manumitted by enrolment on it. But with the falling into desuetude of the census, such a form of manumission became obsolete. Under the Empire the principal case of registration of persons was the compulsory registration in the Augustan census. In this census the name of the owner of land and his age were bound to appear,§ as well as the names and character and extent of the holdings of certain of its non-free tenants, *coloni*, *inquilini*, *casarii*. The nature and extent of this registration is a question which is treated at great length by Marquardt and De Coulanges, and is too large for adequate treatment in this place. Those who were registered were registered *in publicis libris*,|| that is, in the *censuales libri* or *polyptycha*,¶ and were thence called *censiti*** or *adscriptitii*.†† The privileges of a soldier required in certain cases to be proved by the insertion of his name in the roll of the cohort or legion,‡‡ or by a certificate of some one acting on behalf

* *Cod.* xi., 55.

† *Cod.* iv., 47, 2.

‡ *Dig.* xxii., 3, 10. See on this part of the subject M. Cornil's *Etude sur la Publicité de la Propriété dans le Droit Romain*. Brussels, 1890.

§ *Dig.* l., 15, 3.

|| *Cod.* xi., 47, 9.

¶ This word is used in the Theodosian Code, and afterwards frequently occurs in the *Polyptyques* of early French and German Law.

** The proprietor is called *censitus* in one text, *Cod. Theod.* xiii., 10, 5.

†† The *adscriptitii* may or may not have been the same as *censiti*. But the reason of the names seems the same. They were regarded as part of the property entered on the census, *Cod.* xi., 47, 22.

‡‡ *Cod.* xii., 58, 4.

of one of the *scrinia*.* In the Theodosian Code appears a constitution of Diocletian for the registration of artificers.† This is not repeated by Justinian. The names, ages, and nationalities of slaves were registered in the *censuales libri*,‡ but this was probably rather as part of the property of their masters than as part of the population of the Empire.§ It does not appear certain whether there was any official registration of births, marriages, and deaths. The *nuptiales tabulae*, or written record of the marriage, were not essential to its validity. Where they existed, they were destroyed on dissolution of the marriage.|| A divorce seems to have been registered.

In the provinces the principal officer for registration seems to have been the *curator*¶ or *logista*,** but in some there were special officers who had powers in such matters, e.g., the *juridicus* at Alexandria. The *defensores civitatis* had, as has been already stated, limited jurisdiction over registration of wills and gifts.†† The difference between them and the *curatores* seems to be that the former were confined to private documents, the latter had the charge of public documents, especially those of a political nature, such as the register of the council (*lectio senatus*)‡‡ and its entry on the *album decurionum*.§§ The *duumviri* are recognised as local registrars by both the *lex Ursonensis* and the *lex Malacitana*. Provincial administration in the Roman Empire is a matter so full of difficulty that anything said on the subject cannot be regarded as certain.

JAMES WILLIAMS.

* *Cod. xii.*, 60, 10.

† *Cod. Theod. xvi.*, 2, 151.

‡ *Dig. l.*, 15, 4, 5; *Cod. viii.*, 53, 7.

§ They formed a part of the *instrumentum fundi*, *Dig. xxxiii.*, 7, 12, 4.

|| *Tac. Ann. xi.*, 30.

¶ *Cod. i.*, 54, 3.

** *Cod. i.*, 57.

†† *Nov. xv.*, 3.

‡‡ A survival of the *lectio senatus* and *recognitio equitum* at Rome during the Republic.

§§ See the *lex Julia Municipalis*, cited in Bruns and in 1 Marquardt, 223.

V.—CURRENT NOTES ON INTERNATIONAL LAW.

Public International Law.

Governments *de Facto* and *de Jure*.

A very interesting case upon this question arose recently in connection with the Chilian Revolution which attracted so much attention two or three years ago. The facts were briefly these : President Balmaceda, in May, 1891, when the Civil War was at its height, induced the Chilian Cortes to pass a decree authorising him to use and dispose of a large quantity of silver bars deposited at the Chilian Mint. A few days later the Cortes passed a further Law authorising and ratifying all the President's acts. The Provisional Government, instituted by the party opposed to Balmaceda, upon hearing of this, issued a decree declaring that the silver was deposited as a guarantee for the note issue of the State, and was therefore outside the sphere of all commercial movement, and that all negotiations which might be entered into in respect thereof would be null and void. Notwithstanding this counterblast, Balmaceda negotiated for and procured a loan from the London and River Plate Bank upon the security of the bars of silver, which were shipped to Monte Video and ultimately to the head office of the Bank in London. Shortly afterwards, on 28th August, 1891, the supporters of Balmaceda were finally routed in the battle of Placilla ; the President abdicated, and the Provisional Government took up its position in the capital as the sole governing body in Chili. Previously to this, on 17th August, the representative of the Provisional Government had notified the Bank at Monte Video not to part with the silver, but on the 21st August the silver was shipped to London, as already mentioned. The new Government of

Chili commenced proceedings against the Bank to restrain them from dealing with the silver. The action came before the Court of Appeal last August (see *The Republic of Chili v. The London and River Plate Bank*, 10 Times L.R., p. 658), when the Court dismissed the appeal and gave judgment for the defendants. It was pointed out in the Judgment that at the time of the contract with the Bank, Balmaceda's Government was the *de facto* sovereign power; and that even after his resignation, the President was for a time recognised by the English Government, and that the new Government, when it acquired the *de facto* status on or about the 29th August, 1891, remained bound by all the obligations entered into by its predecessor.

This case is really very similar to that of *The Republic of Peru v. Dreyfus Brothers*, which, with the authorities upon the subject was discussed by us at some length in a former issue (*Law Magazine and Review*, No. CCLXXI., for February, 1889, pp. 142, *seqq.*, Art., *Some Recent Incidents in International Law*).

* * *

Private International Law.

Foreign Wills.

The nature of an English grant of administration in respect of English property to the personal representative of a domiciled foreigner, was considered in the recent case of *In the goods of Brieseman*, 6 Rep. 28, and L.R. [1894] 2 Q.B. 260. In this case a domiciled German testator specially appointed persons in England to realise his English estate and transmit the proceeds to the German executors. The Court, however, on the authority of *In the goods of Earl*, L.R. 1 P. 450, declined to grant probate to these persons as executors according to the tenor of the will, but made a grant to them under sect. 73 of the Court of Probate Act, 1857, to administer the estate in England

for the use and benefit of the testamentary executors. The President of the Probate Division expressed the general principle applicable to such cases, in the following words :—
 “ Regard should be had to the Law of the domicile in order
 “ to determine what power or authority has been vested in
 “ anyone with regard to dealing with the estate, and then
 “ to give such a grant to such person as will enable him to
 “ perform in this country the duties imposed on him.”

* * *

Lex Loci Contractus.

The case of *Hamlyn & Co. v. Talisker Distillery*, discussed in our last issue, is now fully reported in the *Law Reports* [1894] App. Cas., p. 202.

JOHN M. GOVER.

Quarterly Notes.

The New System of Local Government.

While it is too early yet for us to be able to say much on this subject, the imminence of the first elections under the Local Government Act, 1894 (Parish and District Councils), at least renders the subject of Local Government a most fitting one for the first of the new series of Acts of practical utility commenced by Messrs. Lely and Craies (*The Annotated Acts, with Introduction, Notes, and Index.* By J. M. LELY, and W. F. CRAIES, Esqrs., Barristers-at-Law. Sweet and Maxwell; Stevens and Sons), as Editors, whose good work in various departments of Legal Literature has frequently been brought to the notice of readers of this *Review*.

The ability of the Editors of the series now before us is too well known to need comment at our hands. That their

work will in no way be guided by the mere notoriety attaching to a particular measure is shewn, if it were necessary for such well-tried Editors to shew it, by the second Act in their series being the Sale of Goods Act, 1893, a measure which, though valuable, as Messrs. Lely and Craies point out, from the point of view of Codification, cannot be said to have excited any general stir such as that which from first to last surrounded the Legislation on Local Government.

What should be the true principles for such a Revolution as will, *ex hypothesi*, be effected by the Local Government Act, is a point which it would be interesting to discuss as a problem in Administrative Law, but such a question scarcely fell within the purview of the annotations supplied by the scheme of Messrs. Lely and Craies. They have only to deal with the Law as they find it, and to state, in the necessary absence as yet of cases on its interpretation, what view they may take of any points that strike them as likely to give rise to doubt.

We feel more free to discuss the general question from the point of view of a Review of Jurisprudence, and we shall probably recur to it from time to time, as cases may arise which throw a light upon the working of the new Legislation, but in any such criticism we shall be very glad of the assistance which we are sure to derive from the work of Messrs. Lely and Craies. We are, of course, aware that it is claimed for the new system that it presents us with an entire scheme of National Local Government, such as was called for by the well-known characteristic of the Anglo-Saxon race, the love of self-government.

By means of a graduated scale of County Councils, District Councils, and Parish Councils, it is claimed that the race whose aptitude for self-government is so marked will now, at last, have a chance to shew that exceeding aptitude to its full.

As far as the action of County Councils enables us to take the measure of the wisdom displayed in these wheels within wheels of self-government, we are not profoundly impressed with a sense of the value of the new creation, and we are doubtful whether the additional bodies now coming into being will greatly modify our present views. What we do know is, that all these new bodies quickly become borrowing and spending bodies, and that the general indebtedness must be increased by each separate creation. Whether this is a benefit or not, may be a question.

Whereas it had at first been urged that Party politics would be absent from the new forms of Local Government, it is now conceded on both sides that Political partisanship must and will enter into them. Regarding this as in itself an evil, we are not thereby prepossessed in favour of the new system, and on the whole, whether we take the area of operations of the late Metropolitan Board of Works, or of the existing Vestries, occupied or overlapped by the new creations, we do not see much difference importing any gain to the nation at large in the possible slight difference between the *mumpsimus* of the old bodies and the *sumpsimus* of the new bodies so loudly vaunted as our perfected system of Local Government.

The subject of which Messrs. Lely and Craies treat in their opening part of Annotated Acts, has also attracted the notice of the learned Professor of Law in one of our modern University Colleges, that of Liverpool (*An Outline of English Local Government*. By Edward Jenks, M.A., Fellow of King's College, Cambridge, Barrister-at-Law, Professor of Law, University College, Liverpool. Methuen & Co.), which in its earlier days had the advantage of another able Teacher of Law in the person of our old contributor, Professor Maitland. The present incumbent of the Law Chair at Liverpool has done well in drawing the attention of his readers, who will mainly, perhaps, be the

general public, to the perplexing way in which it has pleased our Legislators to give the same name to extremely different Institutions, or at least to very varied developments of the same Institution or group of Institutions. This, as Professor Jenks plainly points out, is a "horrible" practice, which leads with "almost deadly certainty to the confusion of the institutions thus similarly named." Parish, County, Hundred, salient features to this day of English Local Government, survivals as they are of days when the Folk moot met on a hill-side or under a tree, are even from the very fact of being such survivals pitfalls for the average Englishman of the Nineteenth Century, in his study of the new system by which he is to be helped, it is supposed, to tread the well-worn paths of Self-Government. It is impossible for us, at this moment, to do more than draw the attention of our readers to the handy little volume by Professor Jenks, to the subject of which we shall hope to devote space on future occasions, as the working of the new system shall be gradually developed in our midst.

* * *

International Arbitration.

This subject, which is much to the fore in the present day, has lately attracted the attention of the able Professor of International Law in the Royal University of Pisa, Marchese Alessandro Corsi, who has devoted to it a Treatise of upwards of three hundred pages (*Arbitrati Internazionali. Note di Critica Dottrinale*. Pisa. Enrico Spoerri, Libraio. 1894), upon which he has invited the judgment alike of the Institute of International Law and of the Association for the Reform and Codification of the Law of Nations. Whether the Institute has as yet taken any action in the matter, we do not know, but the last Conference of the Association, held at the Guildhall of the City of London,

in 1893, on submission to it of advanced sheets of Professor Corsi's volume, appointed an International Committee, which has held several sittings in London, and has also placed itself in communication with its Foreign members. The result, down to our latest information, has been the preparation of a Draft Outline Treaty of Arbitration, by Mr. M. H. Box,—whose practical acquaintance with the details requisite for such an instrument is closely bound up with the latest instance, and that not one of the least famous, in which International Arbitration has been brought into request,—and of a translation of Professor Corsi's suggested Rules for the constitution of an International Court of Arbitration, which have been proposed for the consideration of the Institute and Association, and of the Jurists and Statesmen who are required to deal with the subject-matter of International Arbitration. The draft Rules for the constitution of the proposed Court are eleven in number, and they are substantially the concentrated essence of the first fifty pages of the volume which Professor Corsi has had the courtesy to send us. When the translation of these Rules shall have been circulated by the Committee of the Association for the Reform and Codification of the Law of Nations, we shall hope to print it in the pages of this *Review*, in which we also hope that we may be able to give our readers the opportunity of more fully acquainting themselves with the views advanced by Professor Corsi, which, on some important points, differ not inconsiderably from those ordinarily received. Space and time will not admit of our doing more at the present moment than may be sufficient to draw the attention of our readers to the interesting work in which the learned countryman of Gentili and Mancini formulates his conclusions on a question which he insists upon treating as at once a practical question of the day, and a difficult problem in the scientific development of the Law of Nations, but

one which, whether as a scientific or as a practical question, urgently calls for the best solution which can be given to it by the united efforts of Jurists in all lands, as men of good will towards Peace.

Reviews.

Chapters on the Principles of International Law. By JOHN WESTLAKE, LL.D., Q.C., Whewell Professor of International Law in the University of Cambridge. Cambridge: University Press. 1894.

Whatever Statesmen of a somewhat satirical turn of mind may say to the contrary, either there is such a thing as International Law, or something is in existence bearing such a strong likeness to it that the ancient English Universities are fairly justified in numbering among their Professors the incumbents of their respective Chairs of International Law.

Professor Westlake, it was evident from the publication of his standard Treatise on *Private International Law*, had no doubts upon the existence of the subject of his work, and the fact is even more patent, if it were necessary, from his present volume. That the late Right Hon. Mountague Bernard had no doubt as to the existence of a Law of Nations, none of those who had the privilege of hearing his prelections could possibly have failed to realise, and it always appeared to us a very significant fact that it should have been the Chichele Professor of International Law and Diplomacy to whom the University of Oxford was indebted for initiating the public scientific teaching of General Jurisprudence, in a course of Lectures spontaneously offered to Graduate and Undergraduate members by Mr. Bernard, entirely outside the technical requirements of his Chair. It must have been evident to the entire University that the then Professor of International Law considered his subject to be a branch of General Jurisprudence, and we believe that by this his action he did more than even by his strictly Professorial Lectures to bring home to the minds alike of the Masters and

Scholars of his *Alma Mater* that International Law is a branch of the general Science of Law.

We welcome Professor Westlake's new volume as a fresh assertion of this truth, on behalf of the University of Cambridge, and a fresh proof that the sister Universities are advancing on similar lines of Legal Thought in the matter of the Law of Nations.

In form, Professor Westlake's new work takes a shape which, under the title of "Chapters," appears to the learned Professor to imply a closer sequence than would, in his opinion, have been connoted by the title, "Essays." We are not ourselves persuaded that it would have made any particular difference to our apprehension of his general mode of treatment if the learned author had adopted a different title from that of "Chapters," but we are glad of his book under any title, though we can scarcely at the present moment do more than skirt the fringe of his subject.

There are necessarily several points at which Professor Westlake touches the themes which were lately discussed by Mr. W. E. Hall, in his interesting volume on the *Foreign Jurisdiction of the British Crown*, recently noticed in this *Review*. This was, of course, unavoidable, and it is indeed most desirable that such difficult problems should be as widely as possible discussed among Jurists. What is the nature of Protectorates, in Civilised and Semi-Civilised or Uncivilised countries respectively? What is the nature and what the foundation of the Jurisdiction exercised in such cases? These and other such questions must force themselves before us in days when Protectorates and Spheres of Influence are daily more and more acting and re-acting upon Civilised and Semi-Civilised or Uncivilised man.

It appears to us, if we rightly apprehend his language, that Prof. Westlake attributes, or is disposed to attribute, too small a share to the natives in the foundation of a title to land occupied by Semi-Civilised or Uncivilised races. It must, of course, be granted that it is often difficult to ascertain precisely what is the conception of the ownership of land by such races, and also the precise depositary, if any, of the power to cede their land and vest a title in the immigrant and all-absorbing Civilised man. But, having necessarily conceded this, we have not thereby conceded what seems to be the practical outcome of Prof. Westlake's views, that the races of less civilisation have

no rights at all in their land. We do not, indeed, see that Prof. Westlake says in so many words that such lands are *res nullius*, but his doctrine seems to come to something which it is difficult to distinguish from that view.

"The term Protectorates," as Sir Travers Twiss has remarked in our own pages (*Law Magazine and Review*, No. CCL., for November, 1883, Art. *An International Protectorate of the Congo River*), "is a term of very varied import," and the more we see of Protectorates in different parts of the world, the more we are persuaded of the truth of this statement. Whether in Corea, Tonquin, Tunis, or Madagascar, Protectorates seem likely to give no small amount of anxiety to the Protecting Power. We shall hope to devote fuller space to the discussion of these and other interesting points in Prof. Westlake's volume in a future issue of this *Review*.

Education. A Manual of Practical Law. By JAMES WILLIAMS, B.C.L. A. & C. Black. 1892.

A book on Education Law is always a timely addition to Legal literature, and Mr. Williams is even more to the fore at the present moment in the matter of the keen interest excited by his subject than he was at the actual time of the issue of his handy volume.

We are far now from the days when the Licence of the Ordinary was required for the exercise of the Scholastic profession, but we are in presence of demands, often repeated of late years, for a registration of all teachers. Whether such registration would work miracles in the way of keeping out the teacher of small knowledge and less ability, may be doubted, though we presume that such is the idea of its promoters. Mr. Williams naturally begins with the Universities, as the greatest and most ancient Educational centres of our country. It is somewhat of an irony which compels him to say that the earliest Statute of the Realm dealing with these dignified bodies, is that of Hen. V., cap. 8, which forbade the scholars to hunt by night. The repeal of this Statute in 1863 would seem to leave the practice open to scholars of a sporting turn. But there are still Proctors, and the apparent freedom to don "pink" may be more apparent than real.

What constitutes a University is a question involving research into the mediæval history of Europe, and it is a question upon

which volumes have been written. It is pretty clear, however, that in their inception they were schools, often Monastic in origin, which, Topsy-like, "grew" in some place where the elements of a teaching body existed in the persons of clerks or monks who were fit to assume the position of *Magistri*. After the *scholares* who resorted to such a seat of learning had become fairly numerous, the Pope or the Emperor, or in England the King, stepped in and took the rising institution under his sacred or august protection, and it blossomed into a University, though the term *Universitas* in Roman Law, of course, meant something very different. The notion of a University seems to be subjected to considerable distortion at the present day, when a simple course of Lectures by persons who happen to be members of a University, is dignified with the utterly inapplicable title of "University Extension."

In treating of Grammar Schools, we note that Mr. Williams incidentally throws some light on the *Floruit* of an early master of Tunbridge School, John Stockwood, who described himself as *Scholæ Tunbridgiensis olim ludimagister*, in 1597, on the title-page of his *Progymnasma Scholasticum*. In the *Register of Tonbridge School*, 1820-93 (London: Bentley. 1893), by Mr. Hughes-Hughes, we find Stockwood placed third in the List of Head Masters as having held office from 1574 to 1586, and it is said of him that he wrote several educational works, which had a great reputation in their day. It would seem from Mr. Williams's citation that he must have resigned and survived his resignation some years.

Grammar Schools would form an interesting subject for a separate treatise in the history of Education in England, but Board Schools absorb the largest share of public interest in these days, more particularly in the London of "Diggleites" and "Anti-Diggleites," and the quiet seats of Education hidden away in remote parts of England, such as Sedbergh or St. Bees, are almost forgotten in the heat of living controversies.

The all-embracing network of elementary education under recent Legislation extends to canal boats. We should think that the annual Reports submitted to Parliament on the manner in which the Elementary Education Acts are enforced in this watery department of the subject might afford some curious matter for a future edition of Mr. Williams's book. The question what is a nuisance is one often brought before magistrates, and sometimes even before the Superior Courts. We should think that some years may yet elapse before a case comes up stronger

than *Kemp v. Sober* (1 Simons' Rep., N.S., 517), in which the late Lord Cranworth, in 1857, held that "twenty young ladies practising upon musical instruments" constituted a nuisance. Mr. Williams cites American cases *in pari materia*, on various branches of his subject. There are many points still doubtful in this country, for they await the courageous litigant, and on any of these the view taken by the American Courts would no doubt be carefully considered by Her Majesty's Judges.

Adulteration (Agricultural Fertilisers and Feeding Stuffs). By FRANCIS H. CRIPPS-DAY, M.A., Barrister-at-Law. Stevens and Sons, Lim. 1894.

We have here, from the pen of one of our valued contributors, a useful manual of Agricultural Law, written with the view of bringing the provisions of the Fertilisers and Feeding Stuffs Act, 1893, within the range of the apprehension alike of the Farmer, the Merchant, and the practising Lawyer. An Act, in many respects so highly technical in its character, requires for its intelligent apprehension by the various classes of the community mainly concerned with it, a knowledge of various branches of science not commonly united in one and the same person. A man may be a good farmer without readily understanding many of the provisions of the present Act, and the same may be said of the tradesman and lawyer, either of whom may find himself confronted with requirements couched in a language not familiar to him.

Mr. Cripps-Day has approached his subject alike from its agricultural, mercantile, scientific, and legal aspects, while modestly disclaiming any pretence to bringing out a complete manual for any of those aspects. It is obvious, however, that he has studied each of these sides of his subject with care, and we think there is considerable evidence of his mastery of the situation on the Agricultural and Scientific sides, to an extent not common in the Legal Profession. This is a matter for congratulation to his readers, as some of the points involved require almost microscopic watching, considering that "the custom of the trade differentiates between different kinds of the same seed," and therefore "one trade name may permit of a larger percentage of impurity than another." In connection with this question, Mr. Cripps-Day gives us (p. 25) a sort

of genealogical table of Linseed, shewing its divisions into American, Calcutta, Egyptian, and East Indian, and the further sub-division of American into Ex docks, London made, and Thin Oblong, and of Calcutta into Ex docks, and London made Ex mill. The new Legislation presents a good many traps for the unwary, in connection with the meaning to be attached to its language, for some of which our author resorts to the Foods and Drugs Acts, 1875 and 1879, as throwing light upon them, although, as in the case of what may be held to be "to the prejudice" of the purchaser, much has yet to be submitted in the form of a query whether, under the given circumstances, the purchaser is likely to be held to be prejudiced.

We note with pleasure that Mr. Cripps-Day has largely availed himself of Foreign sources of information both as to the Legal and Scientific aspects of his subject. Thus he cites the contention of a distinguished French Jurist, M. Gain, on a point upon which he himself scarcely goes so far, but he tells us in a note, *in loco*, p. 64, that M. Gain's view of the French Law of 1888 as to the use of the word "guano" being excluded except as applied to a pure natural guano, was sustained in an action in Paris, 10th January, 1889, though he omits to mention the Court which so decided, an omission which he will, we hope, rectify in a future edition, as it would be instructive to know the nature of the Tribunal. Besides M. Gain's *Manuel Juridique de l'Acheteur et du Marchand d'Engrais et d'Amendements* (Paris. Libr. Marescq aîné. 1889), Mr. Cripps-Day not unfrequently cites various works of M. Déherain, and Papers by the same able author in the *Revue des Deux Mondes*, and other authoritative periodicals. His list of Specialists laid under contribution is wide and varied, both as to English and Foreign writers, and includes Darwin, Pasteur, Liebig, Fresenius, and other names in the front rank of Science, besides the publications of the Royal Society of Agriculture and the Board of Agriculture. Apart from thus picking the brains, so to speak, of the learned in many lands, Mr. Cripps-Day also gives us the latest Legislation on his subject in France, Belgium, Germany, and in those States of the United States of America which have taken it in hand, thus making his manual in reality a contribution to Comparative Legislation in this branch of Agricultural Law.

THE LAW MAGAZINE AND REVIEW.

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I.—INDIA, AS IT IS, AND AS IT MIGHT BE.

IF the Mango Tree scare in Behar, and the discussion to which it gave rise in the Press, has done no other good, I hope it has at least convinced the British public, that the relations between the Indian Government and the Indian people are by no means what they ought to be, and that there undoubtedly prevails in our Eastern Empire a very serious amount of discontent and disaffection, which no Government, however well satisfied with itself and its policy, can safely afford to disregard.

And the causes of this disaffection, to those who are honest enough to look facts fairly in the face, are not far to seek.

I am not alluding now to those graver causes of discontent, which are due to the fact, that India is so completely at the mercy of the Home Government, and too often the victim of its convenience and politics. As, for instance, the maintaining in India of a vast military establishment, very far beyond India's requirements, at a cost of many millions a year, simply because it is more convenient for the Home Government to quarter this huge burden upon India, and make India pay the cost of it, than to charge it in the Budget against the English taxpayer. Or, again, the denying to India, at her utmost need, the right to impose an import duty upon cottons, because the Ministry for the time being dare not run the risk

of losing the Lancashire vote at the next election; or again, the putting India to the wicked expense and worry of that useless Opium Commission, merely to please a few well-meaning gentlemen, whose influence it was desirable to retain. These, and many other wrongs of the same character, must be borne, I suppose, at the pleasure of the ruling power, and can only be remedied by some drastic reform in our system of government, such as Sir Auckland Colvin, to his lasting honour, has had the courage to advocate in his Article in the *Nineteenth Century*.

Let us only hope that the Commission of Enquiry, which was promised to India by the Secretary of State at the close of last Session, may be *an honest, impartial, and searching enquiry*; not a miserable mockery, like the so-called "Finance Commission" of 1886, but armed with powers which may serve to avert the ruin of India, and devise some means of preventing the recurrence of those national wrongs, which have sorely tended to bring about that ruin.

No, the causes of discontent and disaffection to which I allude here, and to which I especially invite the attention of my readers, are of a different character altogether; they are, no doubt, less substantial, and might be far more easily remedied, but they are quite as exasperating, and often more calculated to alienate the confidence and respect of the people, than those which I have characterised as national wrongs.

I allude to that arbitrary spirit, that utter want of sympathy and consideration, which so often marks the conduct of the Government, and some of the higher Civilian officials, towards our Indian subjects; and by this I mean not only the masses, but gentlemen of rank and position, both native and European, who do not happen to belong to the charmed Official circle.

Their privileges are invaded, their liberties infringed, their complaints disregarded, and even the decisions of their highest Courts of Justice set at nought, with an apparent contempt for the feelings of the people, which, if practised upon a community less loyal and long suffering than we have in India, might be followed by very serious results. And all this, strange to say, calmly and silently overlooked by that secret conclave at the India Office, whose apathy, I am afraid, can only be explained, by assuming that they do not disapprove, at any rate as strongly as they ought to do, of these high-handed proceedings.

In England we cannot understand all this. We never experience it here and cannot appreciate its ill effects: but we have seen a few instances of it lately reported in the English papers, which may serve in some degree to explain my meaning.

Take this one for an example.

Of all the privileges, I believe, which Parliament has bestowed upon India, there is none more highly prized by the people than the right of Trial by Jury; and well they may prize it. The Police are notoriously corrupt and mendacious; the Magistrates too often inexperienced; and the Government, I am sorry to say, far too prone to put an undue pressure upon the Mofussil Judges to convict: so that the lives and liberties of innocent persons are often in great jeopardy; and the best safeguard they can have is an independent Jury, who know the crooked ways of the police, and can see through their fraud and falsity.

We may, therefore, well conceive the intense feeling of indignation aroused in Bengal, when, without any proper warning or enquiry, the Government of India, at the instance of the Lieutenant-Governor, virtually abolished, with one stroke of the pen, the system of Trial by Jury in that Province.

If the Government, after due consideration, had found reason to suppose that the system was not working well, and had consulted the courts of law and public bodies who knew most about the question, and were most interested in it, and, after hearing their views, had decided in favour of the abolition, there might perhaps have been no reason to complain. But to deprive the people of this much valued privilege without giving them any opportunity of defending their rights, merely, I believe, because in certain State prosecutions the Government had failed to procure a conviction, was naturally considered as a gross act of arbitrary injustice.

Happily, however, an appeal to Parliament and the strong arm of the Secretary of State had the effect of restoring the right, and preventing what might otherwise have occasioned a somewhat serious outbreak. But the position in which the Government was thus placed was certainly not a dignified one, nor likely to improve their prestige in the estimation of the people.

I cannot help thinking that Lord Lansdowne, when, in his farewell address before leaving India, he complained that the House of Commons was too prone to listen to Indian grievances, must have forgotten this little incident of Trial by Jury.

I wonder where the public are to seek redress, when they are robbed of their rights in this arbitrary way, except by appealing to Parliament ; and what use it would be for them to thunder ever so loudly at the door of that dark chamber in the India Office, if the ear of Parliament were not open to their complaints.

Now I do not propose to multiply illustrations, though I am sorry to say they are only too abundant. I cannot do so without making, or seeming to make, personal attacks upon particular officials, which is very far from my wish or intention ; and still less is it my wish to attack the Civil

Service generally. I know well what a splendid hard-writing corps of public servants they are, and what difficulties they have to encounter, and I should like to see them more honoured and respected than some of them are at present. But what I do condemn is, that un-English, ungenerous spirit of arbitrary intolerance, which pervades more or less the whole official system in India, which is encouraged, instead of corrected, by some of the leading members of the service, and which I am quite satisfied is at the root of all the discontent, bitterness, and disaffection, which all true friends of India so heartily deplore.

But of all the many acts of injustice which have marked the conduct of the Government of India of late years, there is none in my opinion which can at all compare with their insolent treatment of the Indian National Congress. There is no subject, I consider, upon which the English press and the English public have been so cruelly and persistently misled by the Government party.

As an illustration of the sort of spirit which animates them against the Congress, I would refer to an article written by Sir George Chesney, K.C.B., in the *Nineteenth Century* for June last.

Sir George Chesney, I need hardly say, is an Indian officer of high position. He has spent the better part of his life in the service of the Government, and he was a member of the Viceregal Council from 1886 to 1891.

He is moreover well known as the author of a work styled "*Indian Polity*," which has just gone through a third edition in the press. He is a staunch supporter of the Government of India, and we may therefore, I presume, accept what he says in the Article to which I have alluded, as being substantially in accordance with Government views and principles.

If any of my readers have not seen that Article, I invite them to read it. It illustrates very forcibly the spirit of

intolerance to which I have alluded, and I can hardly conceive anything more calculated to wound the feelings and excite the disaffection of a people keenly sensitive to ridicule and insult, than the tone and language in which they are spoken of in that Article.

He describes the Indian people generally as absolutely unfit for free institutions ; and if I understand him rightly, he would wish to deprive them, if he could, of those three great blessings, which we are taught to regard as the very elements of freedom—a free Press, a free Bar, and the right of publicly discussing their political views and opinions.

But his attacks are more particularly directed against the "Indian National Congress." He holds it up in most contemptuous language to the ridicule and obloquy of the English people. He speaks of it as "*a class outside and apart from the people of India, properly so called ; a body made up of pleaders in the Law Courts, ex-students from Government Colleges, and the class which works the Native Press.*" He derides their proceedings, insults their Chairmen, and winds up by saying : "*In fact the holders of these Congresses are a set of inept blundering political charlatans. They have never made one useful or practical suggestion, but their proceedings, when not merely silly, are undoubtedly mischievous.*"

Now I think I ought to say, before I proceed further, that so far as I am personally concerned, I am at least as strong a Tory as Sir George Chesney himself. I mention this, not because I am weak enough to suppose that anybody cares at all what my political views may be, but merely to satisfy my readers, if I can, before I come to deal with the pith of my subject, that I am not at all likely to take too Radical a view of the Indian situation, or to espouse the cause of the people against the Government, except for some very good reason. I went out to India in 1875, believing, as most Englishmen do, that our Government

there was a model of paternal rule, and I was most unwilling to come to any other conclusion, until the truth forced itself upon me with a weight which it was impossible to resist.

Having said thus much, I will now deal with what seems to be the principal object of Sir George Chesney's attack, namely, the National Congress, and I propose to consider :

First, who the gentlemen are who compose the Congress; and,

Secondly, what they have done to deserve Sir George Chesney's obloquy and insults.

1st. The Indian National Congress is a large, influential, and important assembly of earnest and patriotic gentlemen, who, since 1885, have at the close of each year met at one or other of the large centres in India, such as Calcutta, Madras, or Bombay, to discuss their political views and opinions.

They consist of delegates from every part of India, who are duly elected at a number of divisional headquarters. We are told that, at the Congress meeting in Allahabad, in the year 1888, fully three millions of men took a direct part in the election of these delegates, who themselves numbered no fewer than 1,248. The constitution of this important body was thoroughly representative; it consisted of Princes, Rajahs, Nawabs, 54 members of noble families, Members of Council, honorary magistrates, chairmen and commissioners of municipalities, Fellows of Universities, members of Local Boards, and professional men, such as engineers, merchants, bankers, journalists, landed proprietors, shopkeepers, clergymen, priests, Professors of Colleges, Zemindars and others.

I should also say that they were thoroughly representative as regards religion, as well as their rank and profession.

The Hindus, of various castes, numbered	...	964
The Mohammedans	... ..	222
The Christians	... ..	38
The Jains	... ..	11

The numbers of each rank, profession and calling will be found in the printed Report of the proceedings of that Congress, published by Hamilton, Adams & Co., Paternoster Row, and I hope that some of my readers will care to study it.

I have instanced this particular Report for three reasons—

1st. Because the place where the Congress was held was Allahabad, an especially central position.

2nd. Because the Report of that meeting gives the number, rank, &c., of the delegates more fully than any other which I am able to obtain.

And 3rdly. Because at the time when this Congress was held, the Government had done their very utmost to discourage and put down the Congress movement, so that the meeting cannot be said to have been held under favourable circumstances.

Thus we see how utterly unfounded is the statement made by Sir George Chesney that the Congress is largely made up "*of pleaders in the Law Courts, of ex-students from the Government Colleges, and the class which works the Native Press.*"

So far as Bengal is concerned, I know it to be untrue. I am personally acquainted with several of these gentlemen. They have often been guests at my own house. I have met them constantly in the best native society in Calcutta, at Government House Levées, and at Government House parties: and I should think that Sir George Chesney, although he may not have known them personally, must frequently have met them there himself.

It is also utterly untrue, that they are, as Sir George Chesney would suggest, *an isolated class*. They are no more isolated, than the members of the Carlton or the Reform or any other Club in London; and I may also say, that I know many native gentlemen of high rank and position, who, although thoroughly favourable to its views,

have been deterred from taking as direct and open a part in the Congress proceedings as they would have wished to do, by the determined jealous hostility which the Government have manifested towards the movement.

2nd. And now, secondly, let us see what these gentlemen have done to deserve Sir George Chesney's invective.

He says that they are "*a set of inept blundering political charlatans ; that they have never made one useful or practical suggestion, and that their proceedings, when not merely silly, are undoubtedly mischievous.*" This is the language in which the member for Oxford, a General in Her Majesty's Army, and K.C.B., thinks fit to insult these gentlemen, who were only lately under his rule as one of the members of the Viceregal Council ; and now, what have they done to deserve this choice invective ?

I will tell you what they have done. They have dared to think for themselves : and not only for themselves, but for the millions of poor ignorant people, who compose our Indian Empire. They have been content to sacrifice their own interests, and to brave the displeasure of Government, in order to lend a helping hand to those poor people.

They have had the courage and the patriotism to denounce abuses, which have disgraced our Indian rule for years past ; which have been condemned by public opinion in India and in England, and to which the Indian Government appear to cling with a tenacity which seems utterly inexplicable. They have dared to propose reforms which, despite the resistance of the Government, have been approved by Parliament, and to endeavour to stay that fearful amount of extravagance, which has been going on in India for years past, and has been the means, as some of our best and wisest counsellors consider, of bringing our Eastern Empire to the verge of Bankruptcy.

This is what these good men have done to deserve the taunts and insults of the member for Oxford city, and the relentless persecution of the Government of India.

And now, as to their never having made one useful or practical suggestion, and as to their proceedings, when not merely silly, being undoubtedly mischievous, I am afraid Sir George Chesney must be a little oblivious.

What does he say to the Indian Councils Act of 1892 ?

That was a reform, I take leave to say, entirely due to the strenuous exertions of the Congress. It was proposed and carried at their very first meeting in 1885. They pressed it in vain upon the attention of the Government year after year, until at last Mr. Gladstone yielded to their urgent solicitations, by passing the Act of 1892.

It certainly is rather amusing under these circumstances, to find Sir George Chesney, in the last edition of his *Indian Polity*, actually modest enough to attempt to take credit to the Government of India for passing this measure, which they had been steadily resisting as long as they could, and which they were only obliged to take in hand at last, for the purpose of *defeating*, as far as possible, the more liberal intentions of Parliament.

As regards the Viceregal Council, I am sorry to say they have succeeded in reducing the intended reform almost to a dead letter. The Government still have entirely their own way in the Council, and their officials are forced to vote for them, whether they will or no. Only witness the lamentable scene which occurred the other day at Calcutta on the question of the cotton duties, when the whole of the non-official members voted against the Government, and some of the official members would have done the same, had they not been forced, like so many dummies, to obey the orders of the Secretary of State. What a mockery to call this a Legislative Council !

Look again at the Resolution so strongly urged by the Congress from the very first in favour of the Separation of Executive and Judicial functions. It is almost impossible to conceive the injustice that has been worked in India by uniting these powers in the same official. The Government know this perfectly well; the Courts of Justice have urged it over and over again; the whole of the non-official community in India abhors the present system; and I am happy to say, that after a long struggle on the part of the Congress, two successive Secretaries of State (Lord Cross and Lord Kimberley) have, in the House of Lords, admitted its iniquity. But the Government still clings to the abuse.

Then again, look at the following Resolutions of Congress:—

1. Against the enormously increasing military expenditure, which Sir Auckland Colvin considers, in common with thousands of other good men, as the main cause of India's distress.

2. In favour of reform in the Police Administration, which, indeed, is most sorely needed.

3. In favour of a Legislative Council for the Punjab.

4. In favour of allowing prisoners in warrant cases to be tried (if they wish it) at the Sessions.

5. In favour of Lord Northbrook's motion in the House of Lords, for a strict enquiry into the Home charges.

6. In favour of appointing Barristers instead of Civilians to some of the District Judgeships.

7. In favour of the establishment of military colleges in India; a resolution, which we were given to understand, was favourably considered by the Duke of Connaught.

I do not enlarge upon these Resolutions, because the English public would hardly understand their merits; but speaking for myself, I entirely approve them; and they have also been approved by thousands of well-informed, educated gentlemen, who, I take leave to say,

with all respect to Sir George Chesney, know quite as much about their merits as Government officers.

I quite admit there are other Resolutions, with which I disagree as strongly as Sir George Chesney ; as for instance, the one in favour of simultaneous examinations in England and India for the Civil Service. If that were carried out, the English element in the service would be inevitably swamped in a very few years ; and it would be absolutely impossible to carry on British rule in India without a competent staff of British officials to work it.

But at the same time it seems hardly respectful to call the Congress leaders a set of "*inept political charlatans*," merely because they pass a Resolution which a majority in the House of Commons thinks proper to approve.

Sir George also, I see, finds fault with the Congress, because in dealing with the poverty of the masses, he imagines that they have lost sight of the fact, that the Government has spent upwards of thirty millions of money during the last few years, in trying to cope with this difficulty. But here again he is mistaken. The Congress are only too mindful of these facts, and well they may be ; because *it is their money and the money of their fellow countrymen* which has been spent in this way ; and they think, and so, I believe, do the great mass of intelligent people in India, that a large proportion of it has been utterly wasted, and that it might have been far more profitably applied in other ways, if the people (through the Provincial Councils or otherwise) could have had some voice in its application.

Now I wish to say further, in conclusion, with regard to the Congress, that I defy any man to find fault with the perfect loyalty and respect to Her Majesty and the Ruling Power, with which its proceedings are conducted. I have studied them from time to time very carefully ; I have never seen a single instance of any disloyal sentiment or

expression ; and I invite Sir George Chesney or any one else to point out anything of the kind.

It seems to me that, so far from being in any way objectionable, the Congress affords an open, honest, and loyal, means of making the views and wishes of the most intelligent section of the Indian people known to the Government. We want no secret societies, no Nihilists or Socialists, either here or in India ; and I firmly believe that, if the Congress or any similar Institution had existed in India in the year 1857, we should never have experienced the horrors of the Indian Mutiny.

If our Rulers in India, instead of trying to balance themselves on a dangerous pinnacle of despotic intolerance, would only descend to a safer level, and invite the confidence and co-operation of the people, I believe that they would find the task of Government far easier in India, than Lord Rosebery and his colleagues find it in the United Kingdom.

And now, what shall we say with regard to the Native Press ?

Sir George Chesney says it is seditious ; that it foments disaffection against British Rule ; and he would cramp its freedom by placing it under Government control. In other words, he would wish the Government to take the law into their own hands, and prevent any criticism by the Press of any high-handed conduct on the part of Government officials. I believe that any attempted coercion of this kind would be a most disastrous step. It was considered a very unwise measure in Lord Lytton's time, and it would be far worse now. What Sir George calls sedition I do not know. I can only say I read Native Papers myself week after week, and never see anything there at all approaching sedition, or even disloyalty or disrespect to English Rule.

What I do find there, and what I rejoice to find, is thoroughly well deserved censure of the arbitrary conduct of many of the Government officials. I am afraid this is

exactly what the Government would wish to repress. I consider it a most wholesome and salutary means of bringing the misconduct of Government officers to the notice not only of the Indian public, but of the Courts of Justice. In many remote parts of the Indian Mofussil this action of the Press is literally the only means of bringing such offences to light, and of preventing the most outrageous acts of petty tyranny.

And now, lastly, one word more with regard to the Native pleaders. I think that Sir George Chesney does them great injustice and I suspect his knowledge of them and their doings is rather limited. They are now far better educated, and a very superior class of men, compared with what they were twenty-years ago. There is, of course, great room for improvement, more especially in the more remote towns and villages; but they will improve, no doubt, as Solicitors have done in this country, with the march of civilization, and a stricter surveillance by the Courts in which they practise. As for depriving unfortunate prisoners, as Sir George Chesney would do, of the right of being defended by a professional pleader, it would be simply the grossest injustice. These poor men, as I have pointed out before, are constantly the victims of the fraud and falsehood of the Police; and if accused persons in the Mofussil were left, without any professional assistance at all, to the tender mercies of an inexperienced Magistrate and an artful policeman, they would have absolutely no chance of obtaining justice.

I am afraid that in the foregoing remarks I may have appeared to deal too personally with Sir George Chesney himself. I can assure my readers that this is very far from my intention. Sir George Chesney has been for years a very valuable and respected Government officer, and I have merely dealt with his Article in the *Nineteenth Century* as containing the views of a late member of the Viceroy's

Council, and a strong supporter and exponent of Government views and principles; and I have discussed them upon that footing.

The spirit which he manifests throughout, and which I cannot too strongly deprecate, is only, I regret to say, a reflex of that which is manifesting itself more and more strongly amongst our leading officials; which has already worked an infinity of harm, and will, I feel sure, if persisted in, be the means of estranging more and more the respect of the Natives and their confidence in the English Rule.

RICHARD GARTH.

II.—THE GOVERNMENT OF INDIA, AND ITS REFORM THROUGH PARLIAMENTARY INSTITUTIONS.

I.

FORTY years ago, a policy of ruthless spoliation, executed in India in violation alike of treaties and engagements and of all sense of fairness and probity, resulted in the rebellion and mutinies of 1857-58, when many of our Indian provinces became the scene of anarchy, outrage and warfare, and British supremacy, to use the words of the historian, “trembled in the balance for upwards of a year.” Parliament then constituted a new form of government intended to secure greater protection for life and property in India; and Her Gracious Majesty the Queen, speaking in the name of the English nation, addressed a solemn Proclamation to the Indian people, in which she said:—“We hold ourselves bound to the natives “of our Indian territories by the same obligations of duty “which bind us to all our other subjects, and those “obligations, by the blessing of Almighty God, we shall

“faithfully and conscientiously fulfil.” This Royal promise was hailed throughout India as the inauguration of an era of justice to all classes; and Professor Fawcett, when quoting the Proclamation in Parliament, said :—“A more solemn promise than is contained in these words was never given by a great nation. How has it been fulfilled?” This question suggests itself with still greater force and significance at the present time, in view of the critical state of things prevailing in India; and it is proposed, in the following pages, to review the provisions which Parliament made for the better government of India, and to see how far the servants of the Crown, whose duty it has been to carry those provisions into effect, have faithfully and conscientiously redeemed the pledge given by their Sovereign.

Act 106 of 1858 provided that India was thenceforth to be governed in the name of the Queen by one of Her Majesty’s Principal Secretaries of State with the aid of a Council of competent persons appointed to hold office during good behaviour; and it was specially stipulated in that Act that no appropriation of Indian revenue should be made without the concurrence of the Council, and that, except for preventing and repelling actual invasion of our Indian possessions, the revenues of India should not, without the consent of both Houses of Parliament, be applicable to defray military operations carried on beyond the Indian frontier.

Act 67 of 1861 provided that, for the better exercise of the power of making laws and regulations, the Governor-General should appoint, in addition to the ordinary and extraordinary members of his Council, a number of non-official persons who should be summoned to all the meetings held for the purpose of making laws and regulations.

Act 104 of 1861 provided that High Courts of Judicature should be established by Letters Patent under the Great Seal of the United Kingdom; that the Judges of those

Courts should hold their offices during Her Majesty's pleasure; that one-third of the Judges should be barristers of not less than five years' standing; that each Court should have superintendence over all the Courts subject to its Appellate Jurisdiction, and issue rules for regulating the practice and proceedings of such subordinate Courts, with power to alter such rules from time to time.

The spirit and intention of the above-mentioned statutes are alike unmistakeable. By Act 106 of 1858, requiring the Indian Secretary of State to consult his Council and to conform to its opinion in all matters involving the expenditure of Indian revenue, Parliament manifestly intended that the Secretary of State should not act arbitrarily, or under the influence of irresponsible advisers who might be interested in a misappropriation of the revenues of India. Furthermore, the strict injunction against the application of Indian revenue to military operations beyond the Indian frontier, was most probably intended to restrain the influence of enthusiastic military advisers prone to urge foreign conquest, regardless of considerations of vital importance to the State; and it is by no means improbable that such injunction was specially intended to prevent military ventures in Afghanistan, such as had resulted so deplorably in 1838-42.

By the Indian Councils Act, 1861, Parliament clearly intended that the laws to be enacted for India should result from the free deliberations both of experienced officials and of non-official persons competent to represent the wants and feelings of the people. It is therefore contrary to the spirit and intention of that Act, that the Official members of the Indian Legislature should be, as they actually are, prohibited from recording their votes in accordance with their convictions and their conscience, and directed to record them simply in obedience to the orders of the Secretary of State. It is likewise a violation

of the Indian Councils Act, 1861, that the Non-Official members of the Legislature should, whenever the Executive may desire it, be excluded from the Legislative Council, by its meeting being convened in the Himalaya mountains or in some other part of India where the Non-Official members practically cannot attend.

Lastly, by establishing High Courts in the Presidency towns, with Appellate jurisdiction and power of supervision and control over the other tribunals established in the same Presidency, Parliament evidently intended to secure the due administration of Justice and the supremacy of the Law throughout those Presidencies. That intention, however, has been flagrantly defeated, and the spirit of the Act deliberately violated, by the Executive using the Legislature for the illegal creation of Courts vested with excessive summary powers, from the decisions of which, under the spurious legislation enacted by the Government, an appeal to the High Court, in some cases does not lie, in others is effectually obstructed. The illegal conduct of the Secretary of State has been carried still further. Government servants have, in violation of Act 104 of 1861, been appointed Judges of the High Courts, although they are, under special covenants, removable from their appointments as Judges, at the pleasure of the Government. The independence of the Crown Courts has thus been directly and flagrantly assailed by the Indian Secretary of State, and a condition of things subversive of Law and Justice is being established in India, such as existed in England before the Revolution, and from which the people of Great Britain and Ireland were relieved only by the expulsion of the Stuarts and by the Act of Settlement, which is the main support of the British Constitution.

It will thus be seen that the Queen's solemn promise of equal justice to all her subjects, and the Acts of Parliaments

constituting the new *régime* for India which was inaugurated by Her Majesty's proclamation, have been deliberately disregarded and openly violated by the Crown Minister intrusted with their fulfilment. Let us now review the results of this nefarious conduct.

The Indian Exchequer is insolvent and on the brink of bankruptcy, the revenues of the country having been diverted from their legitimate purposes, and applied, in violation of the *Act for the better government of India*, to military operations beyond the Indian frontier. Oppressive taxes and illegal modes of assessment and collection have created intense irritation, much suffering, and popular discontent throughout the length and breadth of the land. The Indian Legislature has been deprived of its Constitutional freedom of deliberation, and Bills have been enacted by the exercise of powers which Parliament never conferred on the Government of India. The Inferior tribunals of the country have been illegally withdrawn from the influence of the High Courts, and have, under the control of the Executive, been made the instruments of injustice, rapine and revenge.

That this description of the state of things prevailing in India is not open to the charge of distortion, or even of exaggeration, may be seen at once from the public prints, English and vernacular, in every province of the Indian Empire, and from the proceedings which, almost daily, disgrace the administration of Justice in the District Courts and the subordinate tribunals of the country. Instances of grave illegality and injustice, perpetrated through the instrumentality of those tribunals, have been exposed in the *Law Magazine and Review* during the last three years—instances of private property being illegally seized and appropriated by the Indian Government, as in the Kôt succession, the Sukrâj Knar, the Singampatti, the Bhaunandpur, the Jamalpore Doba, and other cases; of

innocent men being sentenced to imprisonment, transportation or death, without a tittle of admissible evidence of their guilt, as in the Baladhun and Doba and numberless other cases; of highly respectable members of the community being subjected to wanton insult and injury, with no other object than to render them submissive to the illegal pretensions and demands of the Executive, as in the case of Raja Surj Kant of Mymensing, a distinguished member of Indian society and a benefactor of his country, whose public services and honourable character were proclaimed by the Government itself. This gentleman nevertheless was criminally indicted and made to stand in the felons' dock on a false charge of having neglected a *municipal* duty; and he was ultimately subjected to about 100,000 Rs. of costs in order to appeal to the High Court and to prevent the full execution of the Revenue Collector's cruel project against him.

While the present Article is being written, the *Dacca Prokash* brings the report of two cases of grave misconduct on the part of Revenue Collectors vested with Judicial powers. The perversity exhibited in these instances would be incredible were it not that the conduct of Fiscal officers in every part of India is exhibiting the same disregard of both the Law and the dictates of Humanity and common fairness. Indeed, the fact that such conduct, instead of being reprovved by the Government, is condoned and even encouraged, would indicate an intention to incite the people to open resistance, in order to create a plea for calling in the military and more speedily enforcing the illegal exactions of the Authorities.

Of the two cases which have suggested the above remarks, in one, the Deputy-Collector of Dacca sentenced a man to imprisonment for three months on an entirely unsubstantiated charge; and when the sentence was quashed on appeal to the High Court, the order to release

the prisoner was kept back for a time as a defiance to that Court and a discouragement to similar appeals in future. In the other case, the same Revenue officer convicted a man, Thakurdas, on a false charge of theft, sentenced him to be whipped, and actually insisted on having the sentence executed, without waiting for the result of an appeal which had meanwhile been filed, and which resulted in the sentence being cancelled. The Native papers are loudly calling the attention of the community to the atrocious fact that an innocent man has been illegally subjected to a brutal and degrading ordeal, while the paternal British Government of India, who failed to protect him, withholds from him all means of obtaining redress.

Then, as regards official spoliation, among the many instances which have recently come to light, the Forest Administration case reported in the *Pioneer* of 4th November last, is remarkable for the raid which Fiscal officers carried on in the lawless manner of soldiers raiding an enemy's country, and for the perversity of the Deputy-Collector acting as Magistrate, who alleged that it was his duty to convict certain men charged with eluding the Forest regulations of the Government, simply because the prosecution had been ordered by his superior officer, the Collector-Magistrate of the district. As the case is fully reported in the *Pioneer*, a paper well known for the correctness of the information to which it gives publicity, it may suffice here to quote the following passages from the speech of the counsel for the defence, which expose the unprincipled proceedings of those Indian Law Courts which are presided over by Revenue officers vested with Judicial power.

“ I should like to get down on the record the opinion expressed by the Court yesterday that this Court had no concern whether the case is illegal or otherwise, inasmuch as prosecution had been ordered by the District Magistrate ! This is very important as showing that the

" Court is not sitting as a Court of Justice, but merely as a
 " subordinate Court bound to enforce the orders of the
 " District Magistrate, whether they be legal or not! This
 " being admitted, the frame of mind in which the Court is
 " trying the case, and its conception of its duties in the
 " matter, reduce the trial into a farce. As the District
 " Magistrate ordered the prosecution and is virtually the
 " prosecutor, the Court, on its own showing, feels bound to
 " convict, irrespective of the merits of the case! The
 " Court also disallows the evidence tending to prove that
 " the witness (the Deputy-Tehsildar) behaved illegally, on
 " the ground that the District Magistrate condoned the
 " illegality. I wish to point out that two wrongs do not
 " make a right. If the District Magistrate condoned the
 " illegality of the Deputy-Tehsildar, he behaved illegally
 " also, and that is no justification for this Court to carry
 " the illegality one step further still. I would impress upon
 " the Court that it sits as an independent Court of Justice
 " to protect the people from oppression, and not to uphold
 " illegality simply because the District Magistrate has
 " condoned it. The Court is sitting as an independent
 " Court to see justice done, not to carry out the behests
 " of any official, however exalted that official's position
 " may be. The highest, the holiest function of this
 " Court—the function which casts a halo round a court
 " of justice and which secures for it the esteem and
 " veneration of mankind—is to succour the oppressed from
 " the powerful hand of authority wrongfully and illegally
 " applied, not to make that hand more powerful and direful.
 " This is a case which would claim the sympathies of the
 " judicial and the impartial mind. Here we see a
 " Magistrate breaking through the safeguards with which
 " a benevolent Government has sought to secure the
 " liberties of the people; illegally entering their houses,
 " harrying them as if they were beasts who did not possess

“ an immortal soul and the glorious privilege of a free
“ manhood ; piling illegality upon illegality, setting the
“ orders of the Legislature and of the Government at
“ defiance, equally with the liberties of the people ; and
“ then coming into this Court for sanction of his illegal and
“ infamous acts. I cannot believe that this Court has so
“ poor a conception of its high and noble duties, privileges,
“ and powers, as to hold that it must endorse this infamy
“ and illegality simply because it believes that an officer of
“ an exalted position has done so. There are broad rules
“ for the guidance of the Court, which inculcate that its
“ duty is the vindication of justice, not the strengthening
“ of the arm of power—particularly when that power is
“ illegally applied. I call upon the Court to act fearlessly up
“ to those broad rules, to enforce the ordinances of the law,
“ not the behests of superior authority, and to give effect
“ to the promise which His Excellency the Governor made
“ to the people the other day during his tour, when he gave
“ them his word as a nobleman and administrator and the
“ ruler of a great dependency, that the magistrate would
“ protect them from any rigorous application or straining of
“ the Forest laws, and that if the Magistrate failed to do so,
“ the particular case in which such failure occurred should
“ be brought to his knowledge. In this case the liberty of the
“ subject has been violated, villages have been raided whole-
“ sale, houses illegally entered, the very cots (bedsteads) of
“ the people passed down from father to son for a generation,
“ seized and confiscated, and a perfect reign of terror
“ established throughout the district—and the heinousness
“ of these infamies has been aggravated by the fact that
“ the perpetrator is a Magistrate to whom the administra-
“ tion especially looks to protect the people from such
“ oppression and abuse of power. I call upon this Court
“ not to allow the guilt of these proceedings to soil its
“ dignity by countenancing such illegalities. These cases

" have been born in illegality, nurtured in illegality, and it
 " is now sought to mature them in illegality by getting this
 " Court to accord to them its sanction and countenance."

II.

Let us now review the results of the Indian administration exposed in the preceding portion of this Article, and see what measures would best serve to arrest the decline in the finances, to raise the administration of justice from its degraded condition, and to secure the country from similar evils in future.

The situation is at once deplorable and dangerous. The finances have been declining for years, and are now in a most critical state. The depreciation which silver has undergone during the last quarter of a century has been a constant source of embarrassment and anxiety; and successive Finance ministers have warned our Government in impressive terms to prepare for a continued fall in the value of the silver rupee in its relation to the gold currency of the United Kingdom. The warning has been entirely neglected, and much of the present financial crisis is due to that neglect; but its chief and immediate cause is the inordinate growth in the military expenditure of the Indian Government, as Sir Auckland Colvin conclusively demonstrated in the *Nineteenth Century* for October last. In whatever proportions, however, various causes may have contributed to bring about the present situation, the startling fact stares us in the face that the excess of expenditure over revenue and the raising of loans for the difference have become ordinary features in Indian Finance, and that the Indian Exchequer, under such ominous conditions, is steadily drifting towards bankruptcy. It is equally startling to observe that, in this perilous situation, no economy is proposed, no earnest and intelligent effort is made to avert the impending crisis. This indifference on the part of the

Indian Government to a future both alarming and proximate, seems unaccountable except as a consequence of the vicious system of government imposed on India—a system under which the finances of the country are controlled by a Minister whose interest and responsibility in their safety are but remote and transient, being terminable any day with a change in the British Ministry; while interests of a permanent and most powerful nature—the interests of his party—impel him constantly to sacrifice the finances of India to ends which may strengthen and prolong the Cabinet of which he is a member. Under such conditions it would be unreasonable to look for any measure of substantial reform from the willing action of the Secretary of State, seeing that all such reform must necessarily strip him of the quasi-arbitrary power which he now wields. Indeed, it has long been evident that the Indian Secretary's power must be both strictly defined and kept within the defined limits before any measure of reform can have the effect which it is intended to produce.

It has often been said that the financial condition of a State faithfully represents the state of its administration. This proposition seems fully realised in India where the illegal exactions and the oppression of Fiscal officers are systematically condoned and upheld by tribunals presided over by Government servants, and where the reign of Law and Justice has virtually ceased in every province of the Empire. Agriculture, the staple industry of the country, prospered under the laws and regulations which obtained before the inauguration of the present *régime*. The system of periodically re-assessing the land tax, which prevails over a great part of India, hinders, it is true, the development of that industry, by allowing arbitrary enhancements at each settlement—a condition which discourages the employment of capital in the improvement of the soil by exposing the fruit of such capital to be absorbed in the enhancement at

the next settlement. The danger involved in this system is officially recorded in the history of the Bombay Presidency, where "the over-estimate acted upon by our early collectors "drained the country of its agricultural capital, which "accounts for the poverty and distress in which the "cultivating classes were subsequently plunged" (*Deccan Riots Commission*, C. 207, 1878, para. 33). Wiser counsels, however, prevailed later, and when the new settlements had to be made, about the year 1840, great moderation in the assessments was peremptorily enjoined in the following critical terms by Sir George Wingate, one of the most distinguished Revenue officers of the Presidency:—"No "unnecessary reduction can injure the country, and the "Government revenue can only suffer to the extent of such "reduction. An error upon one side involves the inevitable "ruin of the country; an error upon the other, some "inconsiderable sacrifice of the finance of the State; and "with such unequal stakes depending, can we hesitate as "to which should be given the preponderance?" The fruit borne by this policy of moderation is succinctly described in the following extract from the *Report* already cited:—"The country gradually recovered under "the new assessments, and the cultivation extended until "all cultivable land was brought under the plough. "Population and agricultural capital of all kinds increased "steadily; and in 1862 began a period of extraordinary "prosperity."

This prosperous condition of the people (which a wise Government would have striven to maintain, as being the source of national wealth whence additional sources of revenue would accrue to the State) only excited the cupidity of the new Government of India, whose precarious tenure of office made it eager to grasp and use every financial advantage it could encompass, careless of a future in which it could feel no strong interest, and entirely regardless of

the sacred character of its mission. Accordingly, in the new settlements made about the year 1870, the land tax was suddenly enhanced to a literally outrageous and cruel extent, the increase in many instances exceeding 100 per cent., and amounting on the whole to upwards of 60 per cent. beyond the previous demand. The injury and suffering inflicted by this policy of rapacity are but faintly depicted in the following paragraph of the *Report* already mentioned:—"The land settlements were enhanced between 1869 and 1872. From 1870 to 1874 there was a marked difficulty in collecting the revenue, and the area of cultivation contracted at the same time." Significant details, however, are found in the local reports, showing that in 1872-73 10,880 acres of cultivated land in Surat, and 25,035 acres in Guzerat, were abandoned under the pressure of the new assessments; and that in 1874 there was a marked decrease in the revenue collected in the Northern Division of the Presidency, although an increase had been made in the rates; and a Minute of the Bombay Council records that "the Government had read with much concern the opinion expressed by the Collector of Sholapore as to the undue pressure of the revised rates, in consequence of which a large quantity of land had been put up for sale in default of revenue, much of which found no purchasers." Notwithstanding these disastrous effects of the oppressive assessments, thus brought to the knowledge of the Government by its own officers, the Authorities remained obdurate, and serious disturbances broke out in the Deccan, where a military force was employed against the people, for the collection of the enhanced tax. This calamitous course continued to be ruthlessly pursued, and evictions became so general that the quantity of arable land abandoned by the cultivators, in the surveyed districts alone, was returned at 2,238,272 acres in the *Bombay Administration Report* for 1877-78.

Meanwhile, a cultivator complained of the assessment on his field exceeding greatly the limit of one-sixth of the gross produce prescribed in a standing Regulation of the Government. The District Judge, who was a Government servant, dismissed the plaint; but the cultivator obtained a decree in his favour on appeal to the High Court; whereupon the Government introduced a Bill in the Legislative Council, removing all revenue cases from the cognizance of the Civil Courts; and the following observation of the member in charge shows the extent to which illegal exactions were being enforced. Sir Barrow Ellis said: "If every man be allowed to question in a Court of Law the incidence of the assessment on his field, the number of cases which might arise is likely to be overwhelming." This Bill was passed in 1875 as the *Bombay Revenue Jurisdiction Act*, and conjointly with similar enactments relating to Northern India, it has deprived millions of British subjects of their Constitutional right of appeal to British Law Courts for redress and protection against illegal and oppressive exactions of the Executive. The enactment of those measures by the Indian Government, it is submitted, was *ultra vires*, seeing that they are in direct conflict with the provisions of Act 104 of 1861 of the British Parliament, by which power has specifically been conferred on the High Courts of India to control and regulate the subordinate tribunals in the Presidencies.

The Land Tax in Bengal was fixed in perpetuity by certain Regulations enacted in 1793, with the express concurrence of the Crown and Parliament of Great Britain; and the effect of that measure on the prosperity of the country is briefly, but fully, stated in the following extract of an official report dated the 22nd June, 1883, and published in the *Gazette of India* in the following October:—"The Bengal of to-day offers a startling contrast to the Bengal of 1793; the wealth and prosperity of the country have

“ marvellously increased—increased beyond all precedent—
“ under the permanent settlement. A great portion of this
“ increase is due to the zemindari body as a whole.” These
beneficial results are the natural effect of the security given
to private property, and of the confidence which the people
reposed in the promises and intentions of their rulers.
Capital and labour were freely bestowed in reclaiming the
jungle which covered the plains of Bengal; and although
the tax on land amounted, in 1793, to ten-elevenths of its
rental—a burden which many proprietors were unable to
bear, and which caused them to lose their estates under
the stringent rules adopted for the punctual payment of
the revenue—agricultural prosperity and national wealth
steadily increased, opening out valuable and growing
sources of revenue to the State.

The prosperity, thus created under the protection of the
Permanent Settlement Regulations, became an object of
intense cupidity to the new rulers of India; and not only
sophistry, but also official influence and pressure, were
industriously employed for obtaining the co-operation of
Indian officials in a repudiation of the pledges of 1793 and
the appropriation of the wealth produced under their
influence. A member of the Council for India, in reply to
the proposal, said:—“ We have no standing ground in
“ India except brute force, if we forfeit our character for
“ truth;” and a high official in Bengal resigned his appoint-
ment, rather than be a party to the violation of public faith
so solemnly pledged by the nation.

In spite, however, of the many protests and remonstrances
received from its own officers, as well as from the public,
the Government pursued its unfair project and directed
the Indian Legislature to enact a Bill imposing a small
additional burden on land in Bengal. This tentative
measure having led to no popular insurrection, further
steps were taken in the same direction, and later it was

determined to give full effect to the intended confiscation, through a comprehensive legislative Act, abolishing all existing proprietary rights, and creating a class of middlemen charged with the payment of a scanty annuity to the actual proprietors, and empowered at the same time to rack rent the tenant farmers of the estates. The financial advantage looked for by the Government would then be able to be reaped simply by adequate taxation being imposed on the middlemen—a class who, not being a party to the Permanent Settlement, could not legally claim the exemption to which the proprietors of land in Bengal are entitled under the terms of that compact.

Great ingenuity and no small amount of astuteness characterised the course adopted in the further prosecution of the project. A Bill was at first introduced with the sole avowed object of protecting the rights of tenants and of aiding landlords in the recovery of rent ; but it was soon afterwards replaced by a new Bill, on the plea that as the Rent law seemed to need amendment, it was advisable to deal with both subjects in one legislative enactment. This second Bill, at the same time, entirely omitted to provide for the avowed objects of its predecessor, and, after undergoing various alterations, was submitted for the opinions of the High Court and of a number of officials, whose duty it would be to carry out its provisions. The Bill was condemned by all those authorities as being based on a misapprehension of actual facts, as unjust to both the cultivators and proprietors of land, and as impracticable, illegal and iniquitous. Nevertheless, the Bill was passed in March, 1885, as the *Bengal Tenancy Act*, and although ten years have since elapsed, its full execution seems impracticable, and but little progress has been made in the survey, and the Record of rights which is destined to supersede the ancient rights of the proprietors. Meanwhile, the public mind in Bengal remains much disturbed and

alarmed ; land is seriously depreciated, and the increasing difficulty of recovering rent adds each year to the number of estates put up for sale for default of revenue. These sales afford the Government opportunities, of which they constantly avail themselves, for acquiring valuable estates at merely nominal prices.

The following passage in the Preamble of Regulation II. of 1793, will show the direct conflict subsisting between the Regulations of that year (which are still on the statute book) and the Bengal Tenancy Act, and other Indian enactments, empowering Revenue officers to preside as judges in the Law Courts of the country.

“ All questions between Government and the landholders
“ respecting the assessment and collection of the public
“ revenue, and disputed claims between the latter and their
“ ryots have hitherto been cognizable in the Courts of
“ Maal Adawlut or Revenue Courts. The collectors of
“ revenue preside in these Courts as judges, and an appeal
“ lies from their decision to the Board of Revenue, and from
“ the decrees of that Board to the Governor-General in
“ Council in the department of revenue. The proprietors
“ can never consider the privileges which have been conferred
“ upon them as secure, while the Revenue officers are vested
“ with those judicial powers. Exclusive of the objections
“ arising to these Courts, from their irregular, summary, and
“ often *ex parte* proceedings, and from the collectors being
“ obliged to suspend their judicial functions whenever they
“ interfere with their financial duties, it is obvious that, if the
“ Regulations for assessing and collecting the public
“ revenue are infringed, the Revenue officers themselves
“ must be the aggressors, and that individuals who have
“ been wronged by them in one capacity can never hope to
“ obtain redress from them in another. Their financial
“ occupations equally disqualify them for administering the
“ laws between the proprietors of land and their tenants.

"Other security, therefore, must be given to landed
 "property, and to the rights attached to it, before the
 "desired improvements in agriculture can be expected to
 "be effected. Government must divest itself of the power
 "of infringing in its executive capacity, the rights and
 "privileges which, as exercising the legislative authority,
 "it has conferred on the landholders. The Revenue officers
 "must be deprived of their judicial powers. All financial
 "claims of the public, when disputed under the Regulations,
 "must be subjected to the cognizance of Courts of
 "Judicature superintended by judges who from their official
 "situations and the nature of their trusts, shall not only
 "be wholly uninterested in the result of their decisions, but
 "bound to decide impartially between the public and the
 "proprietors of land, and also between the latter and their
 "tenants. The collectors of the revenue must not only be
 "divested of the power of deciding upon their own acts, but
 "rendered amenable for them to the Courts of Judicature,
 "and collect the public dues, subject to a personal prosecution
 "for every exaction exceeding the amount which
 "they are authorised to demand on behalf of the public,
 "and for every deviation from the Regulations prescribed
 "for the collection of it. No power will then exist in the
 "country by which the rights vested in the landholders by
 "the Regulations can be infringed or the value of landed
 "property affected."

Reverting now to the question as to how India is to be
 extricated from her perilous situation, and secured from
 similar dangers in the future, the first step which her
 recent history suggests is that the arbitrary power, the
 exercise of which has disorganised her finances and debased
 the administration of justice, should be abolished; that the
 legitimate powers of the Indian Secretary of State should
 be strictly defined, and that the Minister himself should be
 made practically amenable to a Court of Justice, and be

subject to a personal prosecution for every act exceeding the limit of his authority.

The second step should be to supply a want which has long been felt and is universally acknowledged—the want of a wholesome influence over the Finance. Such an influence can be advantageously exercised only by men personally and permanently interested in the safety of the finances and the welfare of the country—qualifications in which the Secretary of State is manifestly deficient, while subordinate officials would lack the power necessary for the due exercise of the needed influence. In all civilised countries, this influence is exercised, more or less directly, by the taxpayers, who are undoubtedly the body of men permanently and most deeply interested in the safety of the finances and the welfare of the country.

The system of government now followed in India, however, precludes the taxpayers from the exercise of any influence in a matter of such vital importance to them. India has no Parliamentary institution where the wants and feelings of the people can, in a Constitutional and effective manner, be made known to their rulers and legislators—a condition of things which involves serious danger to the State, as all statesmen will doubtless admit. It is true that the Non-Official members of the Indian Legislative Council are theoretically considered to discharge the duties which members of Parliament would fulfil if a Parliament existed. But their insignificant number, and the fact of their being selected by the Government, negate that theory. On the other hand, simply to increase their number, so as to allow them at all times to combine for a majority, might result in rendering the Government powerless for good, and in creating the great peril which arises when the supreme power in a State is vested in a single Popular Assembly.

In nearly every country an Upper House has been found absolutely necessary to prevent the decisions of a Parlia-

ment from being entirely the result of momentary passions and impulses, and to insure their being the conclusion arrived at after mature deliberation and calm reflection.

The task of introducing a fair Parliamentary system in India will, doubtless, be difficult. The establishment of Parliaments in our Colonies presented many difficulties, especially in the Canadian Provinces, where the population consisted of different races, each deeply attached to its traditional institutions, language, and religion. Parliamentary Government, however, rests on principles emanating from the nature of man, and applicable to the wants of communities, irrespective of climate and accidental circumstances. The Parliament of Canada, traced on these principles by Lord Durham in 1837, and subsequently brought into existence, appears to be satisfying the wants and legitimate aspirations of the people, and consolidating the British Dominion in North America. In the general absence of a local aristocracy, a Senate or Upper House had to be formed by Government nominating its members for life; and the rights and functions of the Crown were delegated to the Governor-General, who represents the Sovereign. The varied experiences acquired in our different colonies should, with the aid of trustworthy Indian officials, enable us to adapt the Parliamentary system to the wants and circumstances of India, without the risk of falling into the many errors which generally mark the execution of tentative measures.

To those who are personally acquainted with India, it will doubtless appear advisable to extend the franchise only to the classes able to understand and value the gift, and to appreciate the advantage of a Representative system of government; and if, at the same time, a method should be devised for maintaining some proportion between the power conferred on the elector and the financial burden which he has to bear, the difficulties and dangers which have arisen

in other countries from a neglect of the principle involved, may perhaps be lessened, if not entirely avoided, by the application of that principle to India.

Sir Auckland Colvin, in his very instructive Article mentioned previously, lays particular stress on the fact that "the root of our financial difficulties in India is the insufficient check exercised by the Financial Department"; and Sir David Barbour, in his remarkable speech at the International Bimetallic Conference last spring, said: "The system of government in India is favourable to increase of expenditure and unfavourable to reduction of expenditure." In short, there is a general consensus of opinion that the evil from which India is suffering, can be remedied only by a wholesome influence being created, to control the administration of her finances. Sir Auckland Colvin does not believe that "the time has come when the Indian expenditure can be controlled by an Indian Parliament"; and looks for a remedy to the Finance Minister exercising more influence in the Council of the Governor-General of India. It should, however, be remembered that the decisions of that Council are not final, but may be reversed by the Secretary of State, that is, by the very official who, disregarding the remonstrances of the Finance Minister and the Law member of the Viceroy's Council, insisted on adopting the increased scale of Military expenditure initiated in 1885, from which the existing financial difficulties of India have arisen.

J. DACOSTA.

III.—THE MATRIMONIAL CAUSES ACTS, AND ACCESS TO CHILDREN BY DIVORCED PARENTS.

THE question whether or no a divorced parent should be permitted access to his or her infant children is one of extreme importance; and one for which, I venture to think, the English Law provides a mode of solution not altogether satisfactory.

By the Matrimonial Causes Act of 1857, the Court is empowered to make such provision in the final decree in a divorce suit, as it may deem just and proper, with respect to the custody of the children; and the Matrimonial Causes Act of 1859, recognising that such orders are, by their very nature, temporary and requiring to be altered with any change of circumstance, has widened these powers, and has enabled the Court, upon application, to make orders as to the custody of the children *after* the final decree.

These statutes, then, give the Court the very widest discretion in dealing with the infant children of dissolved marriages; and, so far as the actual "custody" of the children is concerned, no one can cavil at the course adopted by the Legislature; for "custody" is a matter which can only be decided by the Judge in accordance with the exigencies of individual cases. But in deciding upon "custody," it need hardly be said, the Court has also to decide whether the divorced, and therefore (usually, though not invariably) "non-chosen" parent shall be allowed access to the children, either immediately after the final decree, or at any subsequent period.

But is this a question that should be left to Judicial discretion? I venture to think not.

In the first place—as the cases shew—the Courts of first and second instance exercise their discretion with considerable severity; and it comes to this, that, in the absence of very exceptional circumstances, it is exceedingly difficult for a divorced father, and still more difficult for a divorced mother, ever again to get access to his, or her, infant children—and this, too, however blameless the wrongdoer's subsequent life may be.

Of course, a continuance of that immorality which led to the divorce should operate as an effectual bar to any access, and the Court would be justified in repulsing, with very strong observations, any respondent who, at the date of the petition, was, for instance, still living in adultery. But the petitioning respondent who is usually repulsed is one who has made some expiation for the past offence by a period of blameless life; and the question which must present itself on every such occasion is this:—Are the inferior Courts justified in using their discretion in the way in which they use it?

The House of Lords in the case of *Symington v. Symington* (2 H.L., Scotch App. 415) has given a precedent for very much greater leniency; and the Judgments of their Lordships contain almost unanswerable reasons for such a course. The case cited was a husband's appeal against the Judgment of the First Division of the Court of Session, Scotland, whereby he had been found guilty of adultery under peculiarly base circumstances, and had been ordered to separate himself from his wife "in all time coming": she being further granted alimony and custody of the children during their respective pupillarities.

The House of Lords found that the appellant had been guilty of adultery, and therefore upheld the decree; but it reversed the decision of the Court below as to the custody of the children, and committed the sons to the father and

the daughters to the mother. In giving Judgment, Earl Cairns, L.H.C., said :

“ Grave as the offence in this case was, there appears to
“ be no continuance of immorality. It is proved that the
“ husband is affectionately attached to the children and
“ has always been so. He is engaged in a profitable
“ business. I cannot perceive that an order which should
“ take from him the custody of his sons would be conducive
“ to their future welfare. . . . On both sides there
“ ought to be a careful opportunity of access, so that none
“ of the children may grow up without as full knowledge,
“ and as full intercourse as the case will admit of, with both
“ parents, in the hope that a curtain of oblivion will be
“ drawn over all that has occurred.”

Lord Neaves was even more emphatic. “ If we take a
“ man’s children from him,” said his Lordship, “ we
“ leave him a solitary being, and deprive him of the most
“ powerful inducement to amendment of life. It is not
“ that he has committed faults, but that he teaches, or is
“ likely to teach, evil to them, and to corrupt their morals,
“ that can alone entitle us to interfere.”

In the face of such humane and wise utterances as these, coming from so high a Judicial source, how can it fairly be maintained that the Judges of inferior tribunals have no choice but to keep shut the narrow road by which a wrongdoer may hope to recover some fragments of that of which a single false step, possibly bitterly regretted, may have deprived him ?

But it may be contended that *Symington v. Symington* deals with a divorced father, and that, had the guilty party been the wife, a very different decision would have been come to. Granting that adultery in a woman is very much more heinous than in a man, yet it can hardly be urged that the guilty wife should be denied “ the most powerful inducement to amendment of life,” which is given to the

husband; or that, because she is a woman, she is more "likely to teach evil to her children and to corrupt their morals;" or, lastly, that "a curtain of oblivion" is to be drawn only over such unhappy conjugal pasts as contain the husband's lapses from the duties of married life.

Another objection to the conclusions drawn in the present Article from the case of *Symington v. Symington* may be made on the ground that the father had a profitable business, and that the House of Lords clearly felt that his sons would suffer in their material prospects were they to be removed from his custody. The explicit language of the various Judgments renders it idle to contend that this was the sole reason for the decision.

That the advantage of the children—material or moral—should be the decisive factor in these cases, is right enough; and this, incidentally, is one of the reasons why it is usually much easier for a divorced father to keep up intercourse with the children than it is for a divorced mother.

But this doctrine may be pushed too far. The divorced father may be, for instance, at the head of a very lucrative business. Although his crime was of the blackest description, yet his petition for custody will have a better chance of success than that of the father whose fault was of a much more pardonable character, but who cannot offer his children the like material advantages.

Besides, even if the possession of influence, or wealth, or a lucrative business may be justly held sufficient to incline the Courts to give a man custody of his sons, where he would not otherwise have had such custody; yet the advantages of the children, which must be looked to in considering "access," are of a very different kind.

Here the question is of a much more subtle order. The Court has to ask itself whether or no it is to the interest of the children to be cut off altogether from intercourse with their erring parent, and to be brought up in the belief that

he or she is dead. But it may be doubted whether such a course of absolute obliteration is, generally speaking, even possible—it would require that the offence and the consequent separation should have taken place before the children had reached an age of understanding; and even then the gossip of neighbours or servants, if not their own minds, will lead them to ask significant questions, and think out distorted shapes of the truth for answers. However guarded such a household, however circumscribed its topics of conversation, the secret will find a means of entry, and come between the guardian parent and his children—endowing every burst of childish discontent with a character of unnatural bitterness, and rendering any interval of silence ominously significant. At the same time, the fault of the absent parent is exaggerated and magnified; the unremembered personality takes shape in the infant brain; and the shape is usually a very terrible one.

A set of papers, in a petition for access presented as long ago as 1880, is lying before me now. They contain a passage which will illustrate my meaning. A little girl of ten was asked whether she would know her mother were she to see her. "Yes," she answered, timidly; "but I should be afraid of her."

We mortals are always ready to magnify the harm done to us by those nearest and dearest; the children go out into the world, and, in all likelihood, meet with their fair share of the knocks and disappointments which the world distributes so impartially. What is the result?

They put it down to their unhappy circumstances; and deem themselves handicapped by the offence of one parent, and possibly the selfishness of both.

Let us look, for a moment, at the other side of the picture. The Court permits the erring, but repentant, parent to retain whatsoever control an intercourse of, say, two hours per month can give. The children, at least, will

now know the extent of the damage. Instead of the sinister, unseen figure, built up by brooding and rumour, to darken their lives and maim their enterprises, they discover that the divorced parent is a person of ordinary human weakness, though, perhaps, of more than ordinary human folly; and they learn that Society,—in its widest sense,—however severely it is bound to punish lapses from the marriage pact, yet does not deny a measure of rehabilitation to those who give the truest sign of repentance,—to wit, a reformation of life, or, at least, discontinuance of the adultery or immorality which formed the ground for the divorce. Above all, they will find that in the main, public opinion is just and fair-minded, and that no man ever suffers in his chances of worldly success, or in the opinion of his neighbour because of his father's sins; and that, as a matter of fact, he will gain greatly in the estimation of his friends if he proves himself a loving sympathiser for one who has undoubtedly wronged him, instead of permitting himself to be sequestered for ever from one of the authors of his being. Yet, such life-long sequestration is the only natural result of keeping infant children entirely apart from their divorced parents.

Turning, lastly, to the principles of abstract Justice. Is the punishment to be never ending? Public life affords innumerable instances of men, who, having offended, are allowed a fresh start in life. Our private circles of acquaintance may supply us with many more. And it would indeed be a terrible thing if it were not so.

But it may be urged, and with considerable force, that the offences which render a person liable to be divorced are such that the culprit is rightly condemned to lose his children's society for the years which may intervene between the divorce and their majority. And furthermore, that, without such a penalty, a powerful deterrent to desertion, and cruelty, and even adultery, would be removed.

Granting this, for argument's sake, let us have this penalty embodied in a specific statute. At present it depends not on definite legislation, but on Judicial discretion; and, as drowning men proverbially catch at straws, this penalty cannot possibly be the deterrent which its advocates contend that it is.

But if the penalty were embodied in a specific statute—would such a law be, ethically speaking, a just one? Examples drawn from foreign countries are always dangerous, especially when one is dealing with questions of abstract principle; but I cannot refrain from quoting what the “Code Napoléon” has to say upon this subject:—

“Quelle que soit la personne à laquelle les enfants seront confiés, les père et mère conserveront respectivement le droit de surveiller l'entretien et l'éducation de leurs enfants, et seront tenus d'y contribuer à proportion de leurs facultés.” (Bk. I., Tit. vi., c. iv., sec. 303.)

Contrast this with the rule in the case of *Handley v. Handley* (L.R. [1891] P.D. 124):—

“Where a decree for dissolution has been made on the ground of the adultery of the wife, and the infant children of the marriage have been given into the custody of the husband, the Court is not precluded from making an order giving the divorced wife access to them, but as a general rule such an order will not be made.”

Which of these two modes of treatment is the right one? Surely the former, and it is also the more merciful. Who can read the *dicta* in *Symington v. Symington* and yet say otherwise?

The following passages from M. Laurent's valuable commentary on the “Code Napoléon” seem to me to help my argument.

In one place, he says:—

“Des enfants sont nés du mariage; le fait de leur conception pendant le mariage leur a donné la légitimité,

“le divorce ne peut la leur enlever; ils conservent donc tous les droits des enfants légitimes contre leurs parents divorcés, le droit d'éducation, le droit aux aliments, le droit de succession. Par la même raison, les parents divorcés conservent la puissance paternelle sur leurs enfants, car ils ne cessent pas d'être père et mère.”

And again :—

“On demande si l'époux contre lequel le divorce est prononcé perd la puissance paternelle. Nous sommes étonné de lire dans Zachariae que cet époux est considéré comme mort; que, par suite, l'époux qui a obtenu le divorce prend la tutelle des enfants. Comment l'époux coupable serait-il considéré comme mort, alors que la loi permet de lui confier les enfants? Et s'il était mort, la loi pourrait-elle dire qu'il conserve le droit de surveiller leur entretien et leur éducation? . . . il faudrait un texte plus que formel pour que l'époux coupable fut considéré comme mort, alors qu'en réalité il vit et que la loi lui reconnaît des droits sur l'éducation de ses enfants”—as the Law does in this country, provided he have a profitable business.

And this brings me to the main purpose of my Paper. I venture to think that the right course is a middle one between the mildness of French Law and the severity of our own. I would suggest a statute embodying provisions limiting the cessation of intercourse between divorced parents and infant children to a period not exceeding two years from the date of the final decree. The Court, of course, must feel satisfied that the petitioning respondent is leading a blameless life, at any rate at the date of the petition, and any return to immorality subsequent to access being granted, should be sufficient grounds for its revocation.

C. B.

IV.—STATE LABORATORIES AND THE FOOD PRODUCTS (ADULTERATION) COMMITTEE.

THERE are many reasons why the deliberations of the Select Committee of the House of Commons, which sat last Spring and is to sit again in the coming session, to inquire into the adulteration of Food Products, will be of immense public interest. Any tampering with the purity of an article of food or drink affects first of all the public health, one of the first cares of the State. Secondly, its effect is economic. The state of Agriculture in this country imperatively demands that the producers in the British Isles may be allowed, if it be possible, to supply the demands of their countrymen. The question is being considered by the Royal Commission on Agriculture, but it is one which equally concerns the Food Products Committee. If the foreigner can place upon the market a pure and wholesome food cheaper than the home farmer, then there is no cure by legislation, Thrift and Science are the only weapons; but if it be true, and we believe it is, that the victory of foreigners in our markets is largely due to systematic adulteration and sophistication, then the Food Products Committee have it in their power to stamp out those forms of abuse, which science has already discovered, and perhaps thereby help to bring prosperity to the tenant farmer. It is not within the range of practical legislation to solve these questions once and for all, since the ingenuity of man in these days of invention will discover new methods of adulteration and fraud, only to be dealt with from time to time by new statutes. A third reference to the Committee, and part of which the present writer purposes to consider in this Paper, is the administration and procedure under the existing Adulteration laws. The

Food and Drugs Acts have given rise to a proportionally large number of cases stated for the opinion of the High Court, and after the 20 years of trial, it has become apparent that there should be new legislation, not only to ensure an equality of justice, for the convictions are very anomalous, but also to simplify, improve, and economise the administration and procedure under these Acts.

There are in the British Isles many classes of officials directly concerned with the inspection, analysis, and general care of what is intended or exposed for sale, sold, or imported for the drink and food of man. And indirectly the Legislature protects the public as purchasers of these articles by means of various enactments (*a*) connected with the healthy maintenance and good order of bakeries, dairies, markets and slaughterhouses, (*b*) concerning the sale of horse flesh, the carrying on of noxious trades, the pollution of streams and the manufacture of beer and spirits, in each case appointing officials to carry out the provisions of these statutes. Sometimes the primary objects of such legislation may be concerned with the duty which the State feels towards the employed or with the exigencies of State finance, but in all there is a secondary feature, with a view to which each law is in part framed, or which may arise as an unpremeditated consequence of the passing of such a law. Entirely distinct from all these statutes, usually classed as "Public Health" enactments, are those protecting the purchaser from fraud arising in the weighing and measuring of any article, or from imposition by the use of false trade descriptions and marks. Under the former of these Acts a number of official Inspectors are appointed by the Local Authority, and under the Merchandise Marks Acts of 1887, 1891 and 1894, the Boards of Trade and Agriculture are empowered to prosecute, where the public weal is at stake; there is, of course, nothing to prevent the

Customs officers from making use of these enactments at the port of entry. The "Public Health Acts," actually so called, codified the offences relating to the sale of unsound food, and for their administration two classes of officials were called into existence. The Public Health Acts authorised the Urban, Rural, and Port Authorities to appoint Medical Officers of Health and Inspectors of Nuisances, whose duties have been minutely defined and laid down by Orders of the Local Government Board.* The Urban Authority may be either a Municipal Borough Council acting by virtue of the Local Government Act, 1894,† as an "Urban District Council," or an "Urban District Council," not a Borough Council. The Rural Authority will henceforth be the "Rural District Council."‡ The Local Government Act, 1888, in confirming this system of decentralisation, also gave power to County Councils to appoint their own Medical Officer of Health; and it further enacted, subject to special leave to be obtained from the Local Government Board, that certain qualifications were necessary for anyone to hold the office of Medical Officer of Health in any county or county district. These qualifications are such as enable him to practice medicine and surgery, and where the population exceeds 50,000, an additional special diploma in Public Health is required.§ That special diploma is now only granted according to the Regulations of

* These Orders bear date 23rd March, 1891.

† 57 & 58 Vict., c. 73, § 17.

‡ The following are the sections of the Public Health Act, 1875, authorising these bodies to appoint :—

§ 189, "Every Urban Authority shall from time to time appoint fit and proper persons," to be the medical officer of health
inspector of nuisances.

§ 190 (the same as regards the Rural Authority).

§ Local Government Act, 1888 (51 & 52 Vict., c. 41, § 18).

the General Medical Council issued in 1889. The next class of officials came into existence by virtue of the Adulteration Acts, and they are of two kinds. There are the persons putting the Acts into motion by taking or buying samples, who may be any of those classes enumerated in the several different sections of those Acts.* The second set of officials are the analysts, upon whose certificates the prosecutions are undertaken. The samples to be examined prior to any prosecution are handed to the Public Analysts appointed under the several sections of the Adulteration Acts,† subject to the amendment of the Local Government Act of 1888.‡ Their certificate is *prima facie* evidence, but may be attacked by the defence.

* 38 & 39 Vict., c. 63, § 13, "Any medical officer of health, inspector of nuisances, or inspector of weights and measures, or any inspector of a market, or any police constable under the direction or at the cost of the local authority appointing such officer, inspector or constable, or charged with the execution of the Act, may procure any sample of food or drugs. . . . " Any of these officials may employ a deputy (*Horder v. Scott*, L.R. 5 Q.B.D. 552), 42 & 43 Vict., c. 30, § 3. These officers above-mentioned may procure a sample of milk at any place in the course of delivery of the milk.

† "In the city of London and the liberties thereof, the Commissioners of Sewers of the city of London and the liberties thereof, and in all other parts of the metropolis, the vestries and district boards acting in execution of the Act for the better local management of the metropolis, the court of quarter sessions of every county, and the town council of every borough having a separate court of quarter sessions, or having under any general or local Act of Parliament or otherwise a separate police establishment, may . . . and shall . . . appoint one or more persons possessing competent knowledge, skill and experience, as analysts of all articles of food and drugs sold within the said city, etc. . . . but such appointments . . . shall . . . be subject to the approval of the Local Government Board" (38 & 39 Vict., c. 63, § 10.)

‡ § 3. "There shall be transferred to the council of each county, on and after the appointed day, the administrative business of the justices of the county in quarter sessions assembled; that is to say, all business done by the quarter

It is in the discretion of the Magistrate to have the sample also analysed by the Chemical Officers of the

sessions, or any committee appointed by the quarter sessions, in respect of the several matters following, namely:—

(ix.) The tables of fees to be taken by and the costs to be allowed to any inspector, analyst, or person holding any office in the county. . . .

(x.) The appointment, removal and determination of salaries of the public analysts

§ 34. (c.) Such powers, duties, and liabilities of the court of quarter sessions or justices, as in the case of a county are transferred to the county council, shall be transferred to the council of the county borough, whether the same are vested in or attached to the court of quarter sessions, or justices of the borough, or of the county in which the borough is situate:

§ 35. In the case of a quarter sessions borough (not being one of the boroughs named in the Third schedule to this Act) but containing, according to the census of 1881, a population of 10,000 or upwards, the following provisions shall, on and after the appointed day, apply:—

(1.) Nothing in this Act shall transfer to the county council any power of the council of the borough as local authority under any Act, or (save as in this Act expressly mentioned) alter the powers, duties, liabilities of the council of the borough under the Municipal Corporations Act, 1882, but subject to the above provisions and to the savings hereinafter contained, the borough shall form part of the county for the purposes of this Act. . . .

§ 38. Where a borough having a separate court of quarter sessions contained, according to the census of 1881, a population of less than 10,000, the following provisions shall after the appointed day apply:—

(2.) There shall be transferred to the county council the powers, duties, and liabilities of the council of the borough—

(b.) as regards the appointment of analysts under the Acts relating to the sale of food and drugs.*

§ 39. Where a borough, whether with or without a separate court of quarter sessions, contained, according to the census of 1881, a population of less than 10,000, then all powers, duties, and liabilities of the mayor, aldermen, and burgesses, or council of the borough, or the watch committee of the borough in relation—

(b.) to the appointment of analysts under the Acts relating to the sale of foods and drugs† shall cease."

* Analysts had up to this time been appointed by the councils of these boroughs under the Food and Drugs Act, 1875. By this section, this power as regards these smaller Borough Councils passes, subject to the provisos above, to the County Council.

† In boroughs not having any Quarter Sessions, there was power where there was a separate police force to appoint Analysts: the power ceases by this enactment.

Inland Revenue,* but the results of this analysis are in no way binding upon the Magistrate, and the Somerset House Laboratory is not, therefore, one of appeal. Under the Agricultural Fertilizers and Feeding Stuffs Act, 1894,† a different system is in vogue. The Local Authority, that is a County Council, or a County Borough, may appoint the District Analyst, whose certificate is *prima facie* evidence; in case of dispute there is an Official Analyst of Appeal appointed by the Board of Agriculture, whose certificate may also be attacked by the defence, if the defence call the Analyst of Appeal. Under this Act, therefore, there is for the first time something in the nature of a district judicial system for analyses. There is also an Official Analyst apart from all these, appointed by any Court of Summary Jurisdiction, which Court may, under sect. 70 of the Public Health Act of 1875, if they see fit, cause any water complained of to be analysed at the cost of the Local Authority applying to them under that section. The Court will no doubt select the Public Analyst of the district, but is not compelled to do so. Again, there are the Inland Revenue and Customs Analysts and Inspectors appointed by and under the control of the respective Commissioners, who have their own Laboratories. Their first duties are to prevent any fraud against the Revenue of the State, but almost equal in importance is their power to prevent the importation of adulterated and prohibited articles

* "The justices before whom any complaint may be made or the Court before whom any appeal may be heard, . . . may, upon the request of either party, in their discretion, cause any article of food or drug to be sent to the Commissioners of Inland Revenue, who shall thereupon direct the chemical officers of their department . . . to make the analysis, and give a certificate to such justices of the result of the analysis." (38 & 39 Vict., c. 63, § 22.)

† 56 & 57 Vict., c. 56.

and to see to the proper manufacture of certain classes of goods. These Inspectors may condemn, seize, or destroy particular kinds of merchandise under certain conditions, but under others the condemnation or destruction is dependent upon the Analyst's evidence. Under the many Acts to which we have already alluded where the primary objects are, like Revenue Statutes, for other purposes than protecting the consumer concerning his food and drink, there are employed a host of Inspectors to see that they are properly administered.

What the Inland Revenue Commissioners require as the qualifications of their Analysts we do not know. But we were lately told the nature of the qualifications expected of an Analyst whose appointment was submitted to them for their sanction under the Food and Drugs or Margarine Acts, when an official of the Local Government Board was examined before the Adulteration of Food Products Committee, 1894. The following is an extract from his evidence :—

“ Q. 194. Now, as to the qualification of the Analyst, can you give us any information as to what you require, and to whom the certificates are obtained from as to the qualification?—A. No, no special requirement has been laid down, but I may say that although the Sale of Food and Drugs Act does not prescribe any special qualification for the Analyst, yet the Local Government Board have acted as if the requirement of the Act of 1872 was still in force, which provides specifically ‘that public Analysts shall be possessed of chemical, medical, and microscopical knowledge;’ and the Board have expressed an opinion that the following is the evidence which local authorities may properly require as to the candidate for the office referred to possessing the requisite qualifications: (1) Medical Knowledge. Proof that the applicant is registered under the Medical Acts

to practice as a medical man, or in default of this, proof that he has made a special study of the influence of adulterations on health. (2) Chemical Knowledge. The production of diplomas or certificates given in respect of such knowledge or evidence that the applicant has been engaged and is proficient in chemical research. The following may be accepted as proofs of chemical knowledge : (a) To have published good matter on chemical subjects ; (b) to have practised reputably as a chemist ; (c) to have worked in a chemical laboratory as assistant for a sufficient length of time and at sufficiently refined work : (d) to have good certificates which will stand the test of inquiry ; and (e) to have passed some of the higher examinations, especially of late years. Then, with regard to microscopical knowledge, proof that the applicant has been engaged in microscopical investigations and is proficient in the use of the microscope. This is, generally speaking, what is required."

Comparing, then, this system with those of other countries, we find that in France, in the year 1790, the watching over the sale of wholesome provisions by good weight and measure was placed in the hands of the Local Police, Municipal or Rural, and in the following year their duties were extended to the supervision of the retail of these articles in *cafés* and other public places, the local authorities being empowered to appoint, as Commissaries of Police, experts in the examination of provisions and drugs. These administrative arrangements were re-enacted in 1884, when the Municipal or Rural Police were made subject to the control of the Mayor of the Commune, but under the supreme control of the Prefect of the Department, who has power to carry out any measure which he may deem necessary for the health of any *commune*, when such *commune* fails to take proper measures. In Paris, the Prefect of Police assumes the absolute control of the Municipal Police. The

Communal Council and its Mayor seem to correspond to our Parish and District Councils, and the Council of the *Département* to our County Council, but the systems of Local Government, so widely different, perhaps do not admit of comparison. Whereas, in England, the Local Government Board has been evolved by the local institutions, in France, every authority is an organ of one great centralized body, synonymous with the name of Paris. That the former system has the disadvantages and drawbacks of decentralization, although immensely inferior to those of a too great centralization is only too evident to the student of comparative Local Government. Local Government which is not political is everywhere in England the most efficient, the voice of the Central Authority is more often than not the voice of the politician; has not one of the evils of Irish Government always been considered as due to an over-centralization? In Paris, the Prefect of Police, acting as does the Mayor in other Municipalities, under the laws we have already quoted, whereby the sale of wholesome provisions is the special care of the Municipal Police, has established a Laboratory, which has been working since October, 1878, and been open to the public since 1881. As each sample is brought to the Laboratory, a clerk records in a day-book the nature of the sample, the date, the name of the *dépôt* from which it comes, the name and address of the person who brings it, and the name and address of the sender. From this day-book the clerk tears off a check, on which he writes the same particulars and also the date when the complainant is to call again. There are 20 expert-inspectors, of whom 10 are Police-commissaries, and they divide among them for inspection the districts of Paris. They visit all markets, shops and suchlike places, taking samples, and, where they discover any foods undoubtedly bad, destroy them there and then; when they take a sample away, they

draw up a minute* on the spot, and divide such sample in two; it is then initialed and sealed by the owner and Inspector. One portion of the sample goes to the Municipal Laboratory, and the other is kept at the Police *Dépôt* in case any difficulty arises. We noticed that when the sample was first taken to the Laboratory, certain entries were made in the day-book, and besides the check given to the depositor, another check is taken off the counterfoil and is attached to the sample; on this check is written merely the number of the sample and its nature.

In the Laboratory itself the analysts are divided into classes, and each class performs only its own special branch of work. Thus some are tasters, others milk analysts, and so forth. The result of the analysis is recorded on a

République Française.

**Prefecture of Police.*

Central Office.

Chemical Laboratory.

No. of sample, .

No. of report, .

Minute of the day

of .

Sample seized the

day of ,

At Mr. ,

residing at

Paris, .

Paris, the day

of .

The day of we, the Commissary of Police and Expert Inspectors attached to the Chemical Laboratory of the Prefecture of Police paid a visit in accordance with instructions to , residing at , and having announced the object of our visit, we examined the articles offered for sale and took samples as follows :—

(Nature, etc., of samples.)

In the presence of M. we divided the samples in 2 parts, and we enclosed and sealed them in , with labels bearing the number , signed by M. and ourselves. M. answered all our questions.

(Here follow names, etc., of person visited.)

We have drawn up this minute to be forwarded to the Prefect of Police, and it has been signed (or not, as the case may be) by M. after reading it.

Signature of person visited.

Signature of Inspectors

regulation form, and is attached to the original check on the sample and re-forwarded to the office of the Laboratory. When the depositor of the sample is not an Inspector, these two papers are attached to the original record and forwarded to the complainant. When the analysis is of a sample seized by the Inspector, it is copied in duplicate, and one copy forwarded to the Ministry of the Interior (our Home Office). The public have a right to ask for either a qualitative analysis, for which they pay nothing, or a quantitative, the tariff of which varies.

There is still in force in France a law of the First Republic (22 Germinal, An XI.) by which the Government may establish Committees of *savants*, Chambers of Commerce, etc., whose duty it is to study any questions concerning public health and adulteration of food put before them by the Minister in office. In 1884 a Central Committee of Public Health, sitting in Paris, was constituted, which absorbed the functions of a consulting body concerned with the Municipal and Departmental Laboratories. This body does not take any active part in the administration of the law, it is merely advisory; it draws up minutes, and perhaps drafts Bills to be laid before the Council of State. Some of its functions are to advise as to :—

(1) The duties of the Police in regard to Medical and Pharmaceutical matters.

(2) To indicate to the Government upon what questions the advice of the Academy of Medicine should be sought.

(3) To advise as to the quality of foods and drinks.

(4) To advise upon the reports from the Departmental and Municipal Laboratories or authorities.

(5) To report upon the methods of analysis to be used.

(6.) To report generally upon all technical matters. Besides this consulting committee of Public Health, there exist, in each *arrondissement*, committees of Public Health, who advise the local authorities. The *arrondissement*,

presided over by the Sub-prefect, and the Council of the *Arrondissement*, are in no way comparable to our District Council, the Sub-prefect being chiefly an adjutant to the Prefect and the Council, a deliberating and advising body. By many it is considered a useless portion of French local administration.

When a prosecution is instituted in regard to the adulteration of any article, the defence may of course attack the Public Analyst's certificate, and give evidence of their own to support their view. The Court may order a special analysis to be made by any person it may select. The legal theory in regard to experts in France is that the results of the expert's experiment should be presented in such a way as to enable the defence to discuss the deductions from the set of facts which the expert chemist proves. Thus, it has been held that the Court ought to adjourn the case for the results of further experiments, where it is manifest that the facts certified do not sufficiently uphold the conclusion pleaded for by the prosecution. The whole function of the chemist-expert was well discussed in a case at Montpellier (March 20th, 1891), where the chemist refused to give evidence as to his method of analysis. As regards Customs and Imports the procedure is different, for there exists a list of chemists selected by the Government, who report upon any import in consultation with a commercial man appointed by the Customs and another appointed by the defence. Where the two commercial men disagree, the decision of the Government chemist-expert is final.

Under the French Fertilizers Act of 1888, by a supplementary decree of 1889, where a sample of manure is taken by agreement between the parties, the parties may mutually agree upon a chemist-expert, chosen from a list drawn up by the Government; but where an official samples, the chemist is chosen by the local authority. If now the

vendor disputes the certificate of the chemist, the Judge of the tribunal before whom the prosecution takes place selects another expert from the same list. His certificate may be attacked, but the Courts will regard it rather in the nature of a certificate of appeal, and the reading of the facts, which he proves, would probably be the point to which discussion would be directed. Under the Act the methods of analysis are laid down by decree.

In Belgium a different system is in vogue. In that country there are State Laboratories and Civil Laboratories over which the State exercises control, and which do the Government work. The State Laboratories are under the control of a Central Board, who likewise inspect the affiliated Laboratories. This Central Board meets and examines into any questions brought before it by the Government of the day, and its duties are also to (1) consider agreements between the Trade and the Manufacturer; (2) regulate the tariff for analysis; (3) select provincial non-State Laboratories for affiliation. Each State Laboratory is under the control of five delegates, one of whom is nominated by the Central Board, one by the Central Medical Board, one by the Provincial Chamber of Agriculture, and two by the Government. The Director and staff are selected for four years, and the highest salary varies from £140 to £180 a year, inclusive of allowances. The affiliated Laboratories are subjected to periodical inspections, and must be fitted up with apparatus as detailed in the Government order of 23rd June, 1891. These Laboratories, State and affiliated, have to analyse all food, drinks, drugs, manures, feeding stuffs for cattle, and agricultural produce. The tariff of prices, unless there is a special contract, as is allowed in the cases of Communes, is fixed by a decree of 23rd June, 1891.

Generally speaking the calculation of a density costs 10d., any simple analysis 1s. 8d., any rather difficult

one 4s. 2d., and a minute bacteriological microscopic examination 16s. 8d.

Another example of an entirely different system may be taken from the evidence given by one of the witnesses before the Parliamentary Committee of 1894, who brought to the notice of the members the Dairy Bureau, as it exists in the State of Massachusetts, U.S.A.

“ In the State of Massachusetts a law creating a Dairy Bureau went into effect on the 1st September, 1891. According to the provisions of this law, the bureau in question is placed under the control and direction of the State Board of Agriculture, and its particular duties are defined as follows :—To investigate all dairy products and imitation dairy products bought or sold within the Commonwealth. To enforce all laws for the manufacture, transfer or sale of all dairy products, and all imitation dairy products within the Commonwealth, with all powers needed for the same. To investigate all methods of butter and cheese making in cheese factories or creameries, and to disseminate such information as shall be of service in producing a more uniform dairy product of higher grade and better quality. The law gives the bureau authority to enforce all the laws relating to dairy products ; but up to the present it has been only able to deal with the regulations respecting oleomargarine. These regulations are briefly as follows :—(1) Requirements for branding boxes and tubs, and for marking wrapping-paper, with a penalty for false marking or branding ; (2) a prohibition of the use of the word ‘ dairy ’ or ‘ creamery ’ on any tub or package ; (3) a requirement for licensing dealers and conveyors ; (4) a penalty for selling oleomargarine as butter ; (5) requirements for signs on stores and waggons ; (6) a prohibition of its sale at hotels and restaurants without notice ; (7) a prohibition of the sale of any imitation of yellow butter. It appears from the ‘ Report of the Dairy

Bureau of the Massachusetts Board of Agriculture for the year 1892,' that, in enforcing these laws, the greatest number of actions that have been brought by the bureau have been against sellers of an imitation of yellow butter. All these actions have been stubbornly contested. Notwithstanding the opposition that has been encountered, the legislation under which the bureau has acted has apparently been of much value in preventing dishonest practices and in restricting the sale of oleomargarine, which compound has been characterised by the Supreme Court of Massachusetts as a deceptive substance, and one designedly made for the purpose of being passed off for something different from what it is. The bureau also pays great attention to the milk supply, and works in harmony with the boards of health and the milk inspectors in the various cities of the State."

From the evidence given before the Committee of the House of Commons in the Spring of last year, and issued in an *interim* report in 1894, it appears that the systems in the United Kingdom, under which samples are taken, analyses are checked and the statutory arrangements in regard to the Analysts' evidence, are alike unsatisfactory. So far as the Inspectors of Nuisances and Medical Officers of Health are concerned, it is believed that the Local Authorities as a whole find the Public Health Acts workable, but in the case of the Adulteration Acts there is much that might be improved. In the first place it is asserted that the local Inspectors are too well known in their districts, and that consequently it is sometimes impossible for them to procure samples of the adulterated articles known to be supplied to the public; in the second place, it is to be presumed by the examination of the quarterly returns that some districts are far more closely worked by their Inspectors than others, that consequently the Local Authorities are perhaps often largely composed of the very men who retail the various kinds of foods and drugs. Not only do the Food and

Drugs and Margarine Acts hit the dishonest, but also the honest tradesmen; these latter can only protect themselves by obtaining a warranty with each consignment of merchandise. The Courts have luckily only allowed the retailer to escape punishment where he can produce a full and clear statement from the wholesale merchant who supplied him with the goods actually sold as pure.

It can be readily imagined that the most honest tradesman who is prosecuted for selling a bad article, even although he is perfectly innocent, dislikes not only the process and expense of having to prove his honesty, but that he shuns still more the public exposure of a prosecution, which must ultimately do his trade a permanent injury. It would be more than human to expect Borough Councils, composed of these tradesmen, to leave no stone unturned to discover and punish adulteration in all its varied forms by actively enforcing the Inspectors' duties. Nowhere has it been asserted that the Local Authorities have not appointed efficient Inspectors, or that the Inspectors have failed in their duties, and witnesses examined before the Committee have suggested that these difficulties may be removed by the employment of Travelling Inspectors under the direction of the Local Government Board. These officials would be sent to any particular district which the Local Government Board might suspect of being insufficiently worked, and the cost so incurred would fall upon the Local Authority.

Then as to the analytic system. The appointments are good, the Analysts are everywhere considered efficient and thoroughly able to carry out their duties, but it is urged that the statutory form of their evidence is not satisfactory. In the first place their certificate is not received exactly on the footing of expert evidence; it is merely to testify to facts where the case is not one of adulteration, and where it is a case of adulteration the Analyst is only

permitted to record certain observations as laid down in a note to the certificate. An observation of fact other than these renders the certificate invalid.*

When called as witnesses, they may, of course, give any evidence which the prosecution or defence desires. As the Local Government Board or Board of Agriculture issue no legal regulations as to the manner in which the analysis is to be conducted, or as to what is to be considered a pure or an impure article (except in the case of spirits), not only do Analysts' certificates sometimes differ, but upon the same certificates the Magistrates sometimes convict and sometimes do not. The defence may always contest the correctness of the Public Analyst's analysis, and by calling other Analysts it may give a counter-expert opinion. There is by way of quasi-analytic appeal the curious section by which the Magistrate, for his own personal satisfaction, may, before he decides a case, have a portion of the sample analysed by the Government Laboratory at Somerset House. From all sides the Magistrates have complained that the Somerset House Certificate, which, by the way is perhaps not evidence, is most unsatisfactory. And how can it be otherwise? The Somerset House Analysts are not superior in point of training or notoriety to many of the Public Analysts, and the difficulties which arise in the analysis of articles which do not keep are immense. Take butter for example. The difference between butter and butter substitutes is in the percentage of soluble acids present in the former, which become less and less as the butter is kept. A time allowance is made by the Somerset House Authorities, and necessarily, because how otherwise could they give any satisfactory analysis? And such an allowance is, of course, generously made towards the defendant. The results arrive into the hands of the

* *Bakewell v. Davis*, L.R. [1894] 1 Q.B. 296.

Magistrate, the District Analyst is put absolutely in the wrong—Government Analysts have differed, and the case is dismissed.

Sometimes there is a slight variation in this course of events when the Somerset House Authorities, after the lapse of a few days, intimate that the condition of the sample renders analysis impossible.

How unfortunate is this procedure, for not only is discredit cast upon the Local Analyst, and wholly unwarrantably, but also upon scientific evidence in general, and for what reason? For no reason at all, because the Somerset House Certificate is of no greater legal weight (even if evidence, for this is a moot point) than that of the local Public Analyst. It is not a certificate of appeal. Under the Adulteration of Manures Act the system is, as we have seen, slightly different, but as there have been few, if any, prosecutions under the Act, we cannot say how it works. Of this we may be certain that the certificate of the Analyst of Appeal will be contested by the defence as far as possible, and there is nothing which will give more weight to that certificate than would be given to the analysis of many well-known agricultural chemists. And this is not because the presiding chemist at Somerset House is not as good a chemist as any in England, but because it is only the evidence of one chemist against another. Does the French system meet any of the difficulties of which we have made mention? In France there is at all events more finality about the analysis of the expert appointed by the Court, for when a referee chemist is appointed, the Court does rely upon the facts to which he testifies. Under the French Manure Adulteration Act much has been done to obviate unnecessary expense, and a great deal is to be said for the system. Out of a long list of eminent specialists, the litigants ought to at least find one upon whom they can mutually agree for

the analysis of their article, and then if the analysis is disputed, the Court, in selecting another, will probably have no difficulty, because the methods of analysis are laid down, and manures are not very perishable articles. But is not the Belgian system more logical? It seems to the present writer that, after all, the placing of the Laboratories under the control of a Central Committee chosen from the most eminent chemists of the country, and of each Laboratory or affiliated Laboratory under the control of a Board should ensure something like a complete and harmonious system. It is evident that the methods thus adopted can be regulated by no one individual, and that there will be little room for idiosyncrasies. There ought under such a system to be uniformity of chemical results.* It may be urged that in England, where each can carry out his analysis as he pleases, there will surely be given results which check each other and minimise the opportunity of an unfair conviction, but to that it may be answered that it is much better for the vendor to know what methods of analysis he has to meet. And as regards the checking of one Analyst's results by another's, the difficulty would be got over by making it obligatory for the District Analyst and the Analyst of Appeal to conduct their experiments in duplicate. If, again, it be said those methods may permit him to fraudulently carry on his trade by discovering some trick, then with a Central Board for all Laboratories and a Local Board to each Laboratory, it can be urged, it will be a curious thing if such a fraud can be carried on for long. Of course, in Belgium, the Public Analyst's evidence may be attacked by the defence, but any

* And not only uniformity of chemical results, but of administration. At present in England a manufacturer may be fined for selling vinegar which is not malt vinegar, but he will be obliged to pay duty on all vinegar, of whatsoever kind, which he manufactures.

Court will pay great respect to an analysis coming from a Laboratory under such a system.

If, then, any system be devised by which the facts proved by the Public Analyst, confirmed by the Analyst of Appeal, are taken by the Court as proved and not to be rebutted, and this is in many respects what is to be desired, there still remains the question of what facts shall be considered to prove adulteration. In England the most varying decisions are given. Thus, at one place 20 per cent. of water is allowed in butter, in others 17 per cent. is considered as adulteration. In some the minimum percentage of solids in real milk is taken as much lower than in others. In many of the States of the American Union and in some other countries, there are fixed figures, and if the percentage of water in butter or of solids in milk falls below these, the vendor is punished. It is urged that because there are cows whose milk is very poor in solids, these standards are therefore unfair on the vendor, and more especially where he is a small farmer and unable to mix the milks of many cows. But this is scarcely an argument, for why should the consumer be treated differently from the mass of producers, who supply the milk to large retail firms? In nearly all of these cases the wholesale producer has to warrant a very much larger percentage of solids than any law would ever demand. If it is impossible to graft upon our Local Government a complete system of District and affiliated Laboratories, together with a Central Laboratory of Appeal, respectively under local expert Committees and a Central Committee, to carry out the Customs, Inland Revenue, and Adulteration Acts, perhaps it will be well to consider the transfer to the Board of Agriculture of the working of the Adulteration Acts in respect to milk, butter, and cheese, giving the Board power to issue regulations, and revoke them and issue other regulations from time to time, laying down the standards of pure butter and pure milk, and varying, if necessary, these

standards with the season of the year. The Board might also issue regulations as to the methods of analysis to be adopted and the form of certificate. In such a form the most minute details would be given of the time and date of taking the sample, of handing over the sample to the Analyst, and the same details as to when the analysis was made. The certificate would state accurately the methods adopted (if a choice of method was given by the Board), and the experimental weighings, from which the percentages calculated could be checked, all determinations being made in duplicate. Time allowance in the case of the Appeal Analyst's certificate would be laid down, and percentages actually found would be given as well as the percentages as modified by the time allowance.

The writer has endeavoured to bring out some few of the questions which will again occupy the attention of the Select Committee in 1895. The more easy task of pointing out the evils which exist falls to their lot, and it is consequent upon their report that the more difficult duty arises of drafting a Bill at once preventive and repressive. A system of prevention must always mean interference by the State with commerce, the unveiling of trade secrets, and unless very carefully prepared may lead to the discouragement of our own trade to the advantage of that of the foreigner. Useless laws are a source of weakness to those which are necessary; those which allow the law-breaker to escape with impunity, bring the Legislature into disrepute. How difficult it is to deal by a law with any one kind of fraud, and yet to bear in mind the words of the great thinker, Montesquieu :—" Les lois ne doivent pas être subtiles : elles sont faites pour les gens de médiocre entendement ; elles ne sont point un art de logique, mais " la raison simple d'un père de famille."

F. H. CRIPPS-DAY.

V.—FOREIGN MARITIME LAWS: V. PORTUGAL.

TITLE V.

Average Losses.

ART. 634. All extraordinary expenses incurred for ship or cargo, jointly or separately, and all injuries sustained by ship or cargo during the time they are exposed to sea perils, are deemed to be Averages.

§1. But ordinary expenses incurred by the ship, such as are customary on entering and leaving port, as well as the payment of dues and other navigation charges, as also those expenses incurred to lighten the ship to enable her to pass shallows and sandbanks known to exist when she leaves port, are not considered to be Averages.

§2. Averages are regulated by the agreements of the parties, or, failing agreement, by the provisions of this Code.

B. 99-101, F. 397-399, G. 702, 703, H. 696-698, I. 642, R. 391, S. 806-808. E. 235-237.

635. There are two classes of Averages, Great or General, and Simple or Particular.

§1. All extraordinary expenses incurred and voluntary sacrifices made by the Commander or by his orders, to avoid a danger and for the common safety of the ship and cargo from the time the cargo is laden and the ship has sailed until she has returned and discharged her cargo, are Great or General Averages.

§2. Expenses incurred on behalf of a damage sustained by the ship alone, or the goods alone, are Simple or Particular Averages.

B. 99-101, F. 397-399, G. 702, 703, H. 696-698, I. 642, 643, 646, R. 391 S. 806-808, Sc. 187. E. 235-237.

636. General Averages are shared in proportion between the cargo and one-half the value of the ship and freight.

B. 104, F. 401, G. 702, 718, H. 698, 704, 705, I. 647, S. 812, Sc. 157.

637. Particular Averages are borne and paid either by the ship or by the thing alone which has sustained the injury or caused expense.

B. 104, 105, 107, 110, F. 401, 402, 417, G. 718, 723, H. 698, 727-729, I. 647, R. 396, 398, S. 810, 812, 854 (7, 8), Sc. 218. E. 237, 250, 251,

638. A survey and assessment of Averages sustained by the cargo, when visible externally, will be made prior to delivery ; if not visible, a survey may be made afterwards, provided it is completed within 48 hours of the delivery, and this without prejudice to other evidence.

§1. The assessment referred to in this Article decides what would be the value of the cargo if it arrived undamaged, and what is its actual value independent of the question of anticipated profit, but in no case can the cargo be ordered to be sold for the purpose of fixing its value unless the owner requires it.

I. 658.

639. There will be an apportionment of General Average for the purpose of contribution whenever the ship and cargo are preserved in whole or in part.

§1. The contributory values are composed :—

- (1.) Of the whole value that the things sacrificed would have had at the time and place of discharge.
- (2.) Of the whole value which the goods that are preserved have at the same time and place, with the addition of the amount they have been depreciated by the salvage.
- (3.) Of the freight to be carried, deducting the expenses which would not have been incurred if the ship and cargo had been lost at the time the Average loss arose.

§2. Wearing apparel and clothes, seamen's wages, passengers' luggage, ammunition and provisions in the amount sufficient for the voyage, although paid for out of the contribution, do not themselves contribute.

B. 105-107, F. 419, G. 725, H. 731, I. 648, 654, 655, S. 816, Sc. 208-212.

640. Cargo for which there is no Bill of Lading or acknowledgment from the Commander, or which is not entered in the list of Cargo or Manifest is not paid for, if jettisoned, but contributes to the Average fund, if saved.

B. 109, F. 420, G. 710, H. 733, I. 649, S. 816, Sc. 190, 203.

641. Goods carried on deck contribute to General Average, if saved.

§1. When they are jettisoned or injured by the jettison, they are not entitled to a share of the Average fund, and have only a right of action against the Commander, the ship, or the freight, if they were carried on deck without the owner's consent, but there may be a special contribution between the ship, the freight and other goods carried in the same place without prejudice to the general contribution to General Average of the whole of the cargo.

F. 421, G. 710, H. 733, I. 650, S. 855, Sc. 190.

642. If, notwithstanding a jettison or cutting away of ship's apparel, the ship is not saved, there is no General Average contribution, and the goods which are salvaged are not liable for any payment as a contribution to the Average loss of goods which are jettisoned, damaged, or cut away.

§1. If the ship is saved by the jettison or cutting away of apparel, and whilst proceeding on her voyage is lost, goods which are saved only contribute to the jettison on the basis of their value as salvaged, deducting salvage expenses.

§2. Goods which are jettisoned never contribute to Averages sustained subsequently to the jettison by goods which are salvaged.

§3. Cargo does not contribute to payment for a ship which is lost, or condemned as unseaworthy.

B. 111-113, F. 423-425, H. 734, 735, I. 651, S. 856, 860, 861.

643. The provisions in respect to General and Particular Average apply equally to lighters, and goods loaded in such of them as are employed to lighten the ship.

§1. If goods which are discharged into lighters to lighten the ship are lost, the ship and the whole cargo will share in the loss.

§2. If the ship and the rest of the cargo is lost, goods discharged into lighters and which reach their destination do not contribute.

F. 427, H. 702-705, I. 652.

644. Goods which are still on shore do not contribute to losses sustained by a ship of which they were intended to be cargo.

H. 706.

645. If, between the shore and the ship, either the lighters or the goods laden in them sustain an injury which is deemed to be General Average, such damage will be borne in the proportion of one-third by the lighters and two-thirds by the goods laden in them.

646. If, subsequent to the adjustment of Average, goods which have been jettisoned are recovered by their owners, these latter must return to the Commander and those concerned the contribution they have received, deducting loss sustained by the jettison and salvage expenses, and dividing it amongst those concerned in proportion to the amount which each contributed to the sum received.

§1. If an owner of jettisoned goods recovers them and does not claim compensation, such goods do not contribute to Averages sustained by the remainder of the cargo subsequent to the jettison.

B. 115, F. 429, G. 732, H. 739, 740, I. 653, S. 863, Sc. 215.

647. The ship contributes on her value at the place of discharge, or on the price for which she is sold, deducting

the sum total of Particular Averages, even such as have been sustained subsequently to the General Average.

B. 110, G. 719, H. 727, I. 654, S. 854 (7, 8), Sc. 207.

648. Goods and other articles which contribute, as well as articles which are jettisoned or sacrificed, are assessed at their value, deducting freight, entrance and other expenses of discharge, taking into consideration Bills of Lading and invoices, or, failing these, any other means of proof.

§1. If the quality or value of the goods is stated in the Bills of Lading and they are worth more, they will contribute upon, and be paid upon, the real value, if saved, but if jettisoned or averaged, their value will be regulated by the Bill of Lading.

§2. If the goods are worth less, they will contribute on their nominal value, if saved, but will get only their real value if jettisoned or injured.

B. 107, 108, F. 415, 418, G. 720, 721, H. 727, I. 654, 655, 656, S. 854, Sc. 208.

649. Goods which are loaded will be assessed at their value at the place of discharge, after deducting freight, entrance and other discharging expenses.

§1. If the apportionment is made in the same country as that for which the ship sailed or was to sail, the value of the goods loaded will be determined by purchase price, augmented by the expense of getting the goods on board, but not including the premiums of insurance.

§2. If the goods are put on board in a damaged condition, they are assessed at their actual value.

§3. If the voyage is given up or the goods are sold in another country, and the Average cannot be adjusted there, the value of the goods at the place where the voyage is abandoned, or the net proceeds obtained by the sale are taken as the contributory value.

S. 721, H. 728, I. 656, S. 854.

650. Great or General Averages will be adjusted and

apportioned in accordance with the Law in force at the place where the cargo is delivered.

S. 731, H. 722, I. 658.

651. All successive General Averages are adjusted together at the end of the voyage, as if they were one and the same Average.

§1. The provision of this Article does not apply to goods received or discharged at a port of call, but the exception only affects those goods.

S. 850.

652. The adjustment and apportionment of General Average is carried out at the Commander's instigation, and, if he neglects it, at the instigation of the owners of the ship or cargo, without prejudice to the responsibility of the first named person.

§1. The Commander must produce all the ship's books and other papers relating to the disaster, the ship, or the cargo, with his report and proper protest.

B. 118, F. 414, G. 730, H. 724, 726, I. 658, S. 851, 852, Sc. 214.

653. No action for Average can be sustained against a charterer or consignee of cargo if the Commander has received the freight and delivered the cargo without protest, even if the freight has been paid in advance.

F. 435, G. 733, I. 659.

TITLE VI.

Putting into a Port of Refuge.

ART. 654. The following are good causes for putting into a port of refuge:—

- (1.) Provisions, water, or fuel running short.
- (2.) A well-founded fear of enemies.
- (3.) Any accident which renders the ship incapable of continuing her voyage.

S. 819.

See, however, Art. 657, *post*.

655. In any of the cases mentioned in the preceding Article, the Commander may, after consulting the principal members of the crew, and entering in the log and signing the resolution arrived at, put into port.

§1. Persons interested in the cargo laden on board may protest against the decision arrived at to put into a port of refuge.

§2. The Commander must, within 48 hours of his arrival at a port of refuge, make his report before the proper Authority.

I. 516-519, S. 819.

656. The expenses incurred by putting into a port of refuge are on account of the shipowner or charterer.

B. 103, I. 646, S. 821, Sc. 188 (7).

This appears to mean that the expenses are Particular Average on the person in whose interest the ship put into port.

657. Any putting into a port of refuge not caused by the fraud, neglect or default of the owner, commander or crew, is deemed to be legitimate.

658. When the putting into port is on account of the following reasons, it is deemed to be unlawful:—

- (1.) If the deficiency of provisions, water or fuel arises from an insufficient original supply of them, or if they have been lost in consequence of bad stowage or negligence.
- (2.) If the alleged fear of enemies has no justification in fact.
- (3.) If the accident which disables the ship from proceeding on her voyage is caused by want of proper repairs, fittings and equipments, or by bad stowage, or is the consequence of erroneous arrangements or imprudence of the Commander.

S. 820.

659. In case of putting into a port of refuge for a legitimate reason, neither the owner nor the Commander is

answerable for damages which may accrue from it to shippers or cargo-owners.

§1. If there is no lawful cause, the Commander and owner will be jointly answerable up to the value of the ship and freight.

S. 821.

660. A discharge of cargo in a port of refuge will only be permitted when necessary for repairing the vessel or making good damage to the cargo. In such cases, when within the realm and its Colonial possessions, permission must be obtained from the proper Judge, and, when abroad, from the Consular officer, if there is one, and if there is none, then from the local Authority.

G. 504, S. 822.

661. The Commander is responsible for the custody and preservation of cargo when so discharged, unless occasioned by circumstances which are beyond control.

S. 823.

662. Damaged cargo will be conditioned or sold as circumstances may point out, by leave of the authorities named in Art. 660. The Commander is bound to prove to the shipper or consignee the regularity of the course he has taken, under pain of answering for the value of the property in good condition at its place of destination.

S. 824.

663. The Commander is answerable for damages caused by any unnecessary delay in a port of refuge, but if he is there on account of fear of enemy's vessels, his departure will be decided upon in council with the principal members of the crew and those interested in the cargo on board in the same way as a putting into port is decided upon.

I. 646 (7), S. 825.

F. W. RAIKES.

[*.* The Portuguese Code will be concluded in our next No.]

VI.—CURRENT NOTES ON INTERNATIONAL LAW.

Public International Law.

The Declaration of Paris.

The fact that Japan is an accessory to the Declaration and China not, served as the basis of a somewhat alarmist correspondence in the *Times* during October of last year. The matter was something of a mare's nest, and it is hardly necessary to deal seriously with Mr. Gibson Bowles' excursion into the "pastures new" of International Law. All that need be said is that the anonymous critic who replied to him in a series of very able letters, was, to a great extent, fighting the air.

* * *

Extradition Treaties.

There were several new Extradition Treaties entered into by Great Britain during the past year.* That with Liberia contained a list of 32 extraditable offences; that with Roumania 31, and that with Portugal 33. The last named contains a noteworthy proviso in Article 2 to the effect that "the Portuguese Government will not deliver up any person either guilty of or accused of any crime punishable with death."

* * *

International Arbitration.

The spirit of International Arbitration is certainly in the air, and the moral effect of the Behring Sea Reference will long be felt. Quite recently a Treaty has been entered into between our own country and Chili, to refer to arbitration all claims arising in the course of the late Civil War, for

* See *Parliamentary Papers*, 1894: *Treaty Series*, No. 2 (Argentina); No. 6 (Liberia); No. 7 (Portugal); and No. 14 (Roumania).

which the Chilian Government might be held responsible. The arbitrators are to be three in number, one to be appointed by the heads of each of the contracting States, and the third by such heads jointly, or in default of agreement, by the King of the Belgians.*

* * *

Private International Law.

Foreign Wills and Administrations.

In *Canterbury v. Wyburn and Others and the Melbourne Hospital*, 11 Rep., 89 (Jan.), the Privy Council approved of the well-known decision in *Whicker v. Hume*, 7 H.L.C. 124, and held that the Statutes of Mortmain are local in their application and do not affect wills of persons domiciled in the Colonies. In the case in question, a bequest by a Testator, domiciled in Victoria, of money to his Trustees for the purchase of land in England for a charitable object, was upheld. At the same time, it was held that "English Law must decide whether English land can be bought "with money coming from such a source as a foreign will; "and that, if it decides in the negative, the bequest must "fail, not because it is illegal, but because it is impossible "of execution." This decision of the Privy Council distinguishes the case of *Att.-Gen. v. Mill*, 3 Russ. 328, and practically declares the inference drawn from that case by Mr. Westlake (*Priv. Int. Law*, §165) and Mr. Justice Story (*Conflict of Laws*, §446) to be unfounded and inaccurate. As to the general question of the applicability of the Mortmain Laws to Colonial Dependencies, reference should be made to the case of *Jex v. McKinney*, 14 App. Cas. 77.

In another recent case, *In re the Goods of Brown-Séguard*, 6 R. 31 (Dec., 1894), a British subject married a naturalised Frenchman, and died having made a will in English form.

* See *Parliamentary Papers : Treaty Series*, 1894 (No. 18).

Our own Court granted probate of the document, being satisfied that by French Law (notwithstanding sect. 10, sub-sect. 1, of the Naturalisation Act, 1870) the deceased's domicile did not necessarily follow that of her husband, but remained British, and that under the circumstances the French Courts would give effect to the will, so far as it dealt with property in France.

In another recent case, *In re Goods of Migasso*, 6 R. 37 (Dec., 1894), where an Italian subject died in this country, leaving an infant his next-of-kin, and his relatives were abroad, the Court made a grant *ad colligenda* of his property here, under sect. 73 of the Court of Probate Act, 1857, to the Italian Vice-Consul, until one of the relatives should obtain administration.

A still later case, *In re the Goods of Blank*, 6 R. 29 (Dec., 1894), as to foreign sureties to an administration bond, may also be noted.

* * *

Foreign Judgments.

An important question came before the Privy Council in the recent case of *Sirdar Gurdial Singh v. Rajah of Faridkote*, L.R. [1894] App. Cas. 670. The action was one brought in his own Courts by the Rajah of a native Indian State, having an independent civil, criminal, and fiscal jurisdiction, against the defendant, who was formerly Treasurer to the plaintiff. The claim was a personal one. At the time of the action the defendant was out of the jurisdiction of the State, but was served with certain notices of the proceedings, which he disregarded, and never appeared in the suits, or otherwise submitted to the jurisdiction. Two *ex parte* judgments were obtained against him however, but the Privy Council held that the Rajah's Courts had no lawful jurisdiction over the defendant, and that the judgments were of no effect. Lord Selborne, in a

very lucid judgment, distinguished *Becquet v. Macarthy*, 2 B. & Ad. 591 (See Westlake, *op. cit.*, §321), and disapproved of the meaning, as usually understood, of the *dictum* of Blackburn, J., in *Schibsley v. Westenholz*, L.R. 6 Q.B. 161 (See Westlake, *op. cit.*, §322). His Lordship made some very valuable remarks upon the legal question : "Territorial jurisdiction attaches (with special exceptions) upon all persons, either permanently or temporarily, resident in the territory while they are within it ; but it does not follow them after they have withdrawn from it, and when they are living in another independent country. It exists always as to land within the territory, and it may be exercised over moveables within the territory ; and in questions of status or succession governed by domicile, it may exist as to persons domiciled, or who, when living, were domiciled within the jurisdiction." "In a personal action, to which none of the causes of jurisdiction apply, a decree pronounced *in absentem* by a foreign Court, to the jurisdiction of which the defendant has not in any way submitted himself, is, by International Law, an absolute nullity. He is under no obligation of any kind to obey it ; and it must be regarded as a mere nullity by the Courts of every nation except (when authorized by special local legislation) in the country of the forum by which it was pronounced."

A somewhat similar point arose in the recent case of *Bouchet v. Tullidge*, XI. *Times L.R.*, p. 87, which also on another point followed the decision in *Nouvion v. Freeman*, 15 App. Cas. 1, as to the finality and completeness of a foreign judgment.

* * *

Ownership of Moveables.

A rather curious point arose in the recent case of *N. W. Bank v. Poynter, Son, and Macdonald*, 11 R. 73 (Jan., 1895). The facts were somewhat complicated, and

need not be considered in detail here; but in applying the principles of English Law to the matter, Lord Watson made a "general observation," apparently with the approval of Lord Herschell, L.H.C., and Lord Macnaughten, to this effect: "When a moveable fund, situated in Scotland "admittedly belongs to one or other of two domiciled "Englishmen, the question to which of them it belongs is "*primâ facie* one of English Law, and ought to be so treated "by the Courts of Scotland." The principle appears to be one which might certainly lead to some startling situations, were not its effect almost entirely nullified by the introduction of the expression "*primâ facie*."

* * *

Bankruptcy.

The case of *In re Nordenfeldt*, 14 R. 275 (Jan., 1895), should be noted, as to a domiciled foreigner "having a "dwelling-house in England" under sec. 6, sub-sec. 1 (*d*) of the Bankruptcy Act, 1883.

* * *

International Copyright.

The decision of the Court of Appeal in *Hanfstaengel v. American Tobacco Co.*, 14 R. 310 (Jan., 1895), is important as explaining the general policy and construction of the International Copyright Act, 1886.

* * *

Foreign Immoveables.

The case of *In re Piercey, Whitwham v. Piercey*, L.R. [1895] 1 Ch. 83, raises a very curious question as to wills of foreign lands, which we hope to consider in greater detail on another occasion.

J. M. GOVER.

VII.—NOTES ON RECENT CASES (ENGLISH).

Analysis under the Margarine Act.

THE way in which the Margarine Act, 1887, is dovetailed into the Sale of Food and Drugs Act, 1875, is shewn by the case of *Smart & Son* (appellants) v. *Watts* (respondent), in the Queen's Bench Division, where it was decided that an Inspector seeking to enforce compliance with the requirements of the Margarine Act, 1887, should, as a condition precedent, himself carry out properly the provisions of the Food and Drugs Act, 1875, as to the analysis of the substance. The Margarine Act, 1887, after enacting that Margarine packages shall be duly branded or durably marked, provides that all proceedings under it shall, save as expressly varied by the Act, be the same as those prescribed by the Sale of Food and Drugs Act, 1875, and this statute enacts, *inter alia*, that an Inspector obtaining samples of food or drugs should, if he suspects them to have been sold contrary to the statutory provisions, submit them to be analysed, notify the seller of his intention to that effect, and offer to divide the article into three parts, having each part marked and sealed, delivering one of the parts to the seller or his agent, retaining one for future comparison, and submitting the third part, if deemed suitable for analysis, to the Analyst. An Inspector, the respondent in this case, who had not carried out these requirements, when purchasing from the appellants a substance sold as butter, though afterwards admitted to be margarine, had sought a conviction for infringement of the Act, but having failed to comply with the statutory requirements, the Court held no conviction could follow, on the ground that it was a condition precedent for the Inspector to carry out the statutory provisions by having an analysis. This is a case

to be noted in *The Adulteration Acts* (*Farmers' Gazette* office, 1894), an admirable little work by R. J. Kelley, Barrister-at-Law, and Sir Charles Cameron, M.D., F.R.C.S.I., just published, in which a review of the Sale of Food and Drugs Act with all the leading cases under it up to date, is given. The authors state that the Margarine Act, 1887, which was intended to protect the sale of natural butter, has been so little used that three cases are the only recorded decisions under its provisions. They add some useful recommendations for the revision of the Margarine laws.

* * *

Drains and Sewers.

A curious complication over drains, sewers, and nuisances lately arose in the case of *Jones v. Banter*, in the Queen's Bench, of which there seems to be, as yet, no report except in the Daily Papers. The facts of the case shewed that both plaintiff and defendant held their respective premises on leases granted by the same ground landlord, and by the lease plaintiff was entitled to a free passage for the water and soil coming from her houses into and along the drains and sewers under the defendant's premises. A short time since the defendant was served by the Vestry of St. Matthew, London, with notices pointing out that the system of drainage in connection with her houses was defective, and calling upon her to relay and make good the same. Believing that it was her duty to comply with the notices, she called in a builder, who relaid the drains to the satisfaction of the Inspector of the Vestry. The level of the drain of No. 6 (one of defendant's houses) was altered, with the result that the drainage from No. 4 (one of plaintiff's houses) could not flow into it. The Vestry subsequently threatened the plaintiff with proceedings for creating a nuisance, and she applied to Mr. Justice Day for an Injunction restraining the defendant from continuing to obstruct the flow of the drainage of No. 4 into the drain of No. 6, and the application

was referred to this Court. The plaintiff now contended that defendant ought not to have paid any attention to the notices of the Vestry, because the pipe through which the sewer passed was not a drain, but a sewer, and, therefore, repairable by the Local Authority. She further asserted that the defendant, by carrying out the work, had converted a sewer into a drain, and thereby rendered her (plaintiff) liable to penalties for an alleged nuisance. Mr. Justice Collins, after hearing the evidence, said the pipe in question was admittedly a sewer and not a drain, and, therefore, the Local Authority was liable to remove any nuisance, and not the defendant. He granted an Injunction and awarded plaintiff 40s. costs. In a manual of the *London Health Laws* (Cassell & Co., Ltd., 1894), just issued by the Mansion House Council on the Dwellings of the Poor, the law as to drains and nuisances is succinctly stated according to the provisions of the Public Health Act for London and the Metropolis Management Acts, and property owners who get into similar difficulties to those detailed in the foregoing case will find much assistance in solving them.

* * *

Common Law Trade Marks.

Two cases dealing with what Mr. Fulton in his *Practical Treatise on Patents, Trade Marks, and Designs* (Jordan & Sons, 1894), calls "Common Law Trade Marks," though he attributes the origin of the expression to Lord Justice Lindley, are those of *Reddaway v. Banham* and *Reddaway v. Benthams Spinning Company*. The former is the most recent case, and there the question was as to the right of the defendant to use the term "camel-hair" as descriptive of certain belting which he manufactured. The Court of Appeal held that the defendant had such a right. A man might call the goods he was selling by the name by which anyone wanting the goods would, in ordinary course, call them in any market

in which he wanted to buy or sell them, although, in so doing, he called them by the name by which the person who complained had called his goods in a market, until, in that market, the name alone was taken to mean his goods alone. The goods manufactured by the person who offends, however, must be correctly described, *e.g.*, as of "camel-hair," as was the case here, and if that is a correct description, an Injunction to restrain the use of the term "camel-hair" will not issue. On the other hand, if, as in the case of *Reddaway v. The Bentham Spinning Company*, the belting is not made, even principally, of camel's-hair, then to describe it as camel-hair belting is not an accurate description, but simply a fancy name.

* * *

Excess Fares on Tramways.

In this practical and economising age a curious point as to the right to save a halfpenny lately came before Mr. Horace Smith, at Clerkenwell. A passenger got on to a tram car and paid a penny, which carried him a certain distance; afterwards he said he would ride a further distance, and tendered a halfpenny, the fare being three-halfpence. The conductor, however, said that, though the fare was three-halfpence for the whole distance, the defendant could not continue his ride by paying a halfpenny, and must pay a penny for the further distance. The three-halfpenny fare was only admissible for through passengers, and as Mr. Horace Smith considered defendant was wrong in law but right in common sense, he merely imposed a fine of sixpence and costs. This decision has led to some correspondence in the Daily Papers, the defendant claiming that the Tramway Company ought to issue tickets for the excess fare, instancing the Railway Companies. This decision and subsequent letters have led to an interesting review of the subject of excess fares on Tramways. It appears that all the bye-laws of the London Companies

are contained in the *Abstract of Laws relating to Hackney Carriages, &c.*, published by Her Majesty's Stationery Office, on sale at the Queen's Printers, and presented by the Police to each driver and conductor on the occasion of his taking out a license. There is no bye-law relating to excess fares, and a conviction can only be obtained under another (No. 9) by putting a forced interpretation thereon. No bye-law is necessary, as the case is fully met by the provisions of the Tramways Act, 1870. The bye-law, as interpreted by the Company's solicitor in the foregoing cases, could, it was said, have been over-ruled by the Magistrate as being unreasonable. Section 51 of the Tramways Act, 1870, inflicts a penalty of 40s. upon, *inter alios*, "any person" who, "having paid his fare for a certain distance, knowingly and wilfully proceeds in any such carriage beyond such distance, and does not pay the additional fare for the additional distance," &c. The Act, it will be observed, does not say the "fare for the additional distance," but the "additional fare," that is to say, the excess fare. In the Act regulating Railways, there is a similar provision. Lord Esher, in the case of *Rayson v. South London Tramways Company* (July 12th, 1893), said that this enactment was an exceedingly strict law in favour of Tramway Companies. The proceedings in that case, before the Magistrates, resulted in the case being dismissed, and subsequently Miss Rayson recovered £150 damages against the Company, and though the Company appealed, it was unsuccessful. Section 45 of the Tramways Act, 1870, has also to be considered, providing there must be a table of fares outside the car, for if there is no such table, the passenger may object that no fare can be legally demanded, unless the provisions of the section have been complied with. The *Metropolitan Police Guide* sets out these sections of the Tramways Act.

T. F. UTTLEY.

Quarterly Notes.

The Dutch Government, and Mahommedan Law in the Dutch East Indies.

Those of our readers who are interested in the Laws which pervade the vast Eastern dominions of the Empress of India may remember our recording in these pages a few years ago the publication at Batavia of a great work on Mahommedan Law, the *Minhâdj at-Tâlibîn*, edited and translated into French by M. L. W. C. Van den Berg, under the orders of the Dutch Colonial Government. Since that time the Home Government of the Netherlands and M. Van den Berg (now Professor of Mahommedan Law, at the Ecole des Indes, Delft) have laboured diligently in the same field ; and the result of their united efforts has recently appeared in the reproduction of another fine work under the same auspices and in a similar form, the *Fath al-Qarîb* (*La Révélation de l'Omniprésent*), by Ibn Qâsim al-Ghazzî, of which a copy has, we are glad to state, been courteously presented by the Netherlands Colonial Ministry to one of our valued contributors, the Professor of Indian Jurisprudence, King's College, London.

The *Fath al-Qarîb* (Leyden : E. J. Brill. 1894), like the *Minhâdj at-Tâlibîn*, is a work on the Shafeite branch of the Sunni Mahommedan Law. It is a smaller work than its predecessor, consisting of one volume instead of three ; but as this one volume contains about 750 pages, it will be understood that its preparation must have cost a good deal both in work and in money. The Arabic text occupies the left-hand pages, the French version the right, so that the reader has the two languages side by side, and can compare their phraseology as he proceeds. The annotations are numerous, as several MSS. of the original have been collated, and many variants are recorded, besides which

there are explanatory notes here and there, and references to other parts of the same book, and to the *Minhâdj at-Tâlibîn*, the Koran, &c.

To those who are familiar with the Laws of Islam it will be no surprise to hear that a great part of this book deals with matters of prayer, cleanliness, and other duties of a religious and personal description, which Western Jurists would not recognise as coming within the category of Law. We should not expect to find in a French or English legal treatise, as we find here, a set of rules as to the proper way of bathing or the use and abuse of tooth-picks! While, however, the mere lawyer would consider a large portion of the book quite useless, the student of manners and customs might possibly deem that same portion to be of special value. It might interest the latter to follow the Eastern train of thought and to see the exquisitely minute elaboration with which rules are formulated, divided, and sub-divided, on points which Western civilisation either ignores altogether or leaves to private training and an innate sense of the proprieties of life. It must not be supposed, however, that there is *no* law, in our sense of the word, in the book of Ibn Qâsim al-Ghazzî; the subjects of Sale and Gift, Inheritance, Testamentary Disposition, Marriage, Dower, &c., are treated, each at some length, though not so fully as in the *Minhâdj at-Tâlibîn*.

As regards Inheritance (*succession*) in particular, it is to be regretted, perhaps, that the Arabian Jurist did not think so important a subject worthy of more extensive treatment. The rules, though wonderfully well expressed considering the small space they occupy, are so intensely laconic that they may sometimes mislead a careful reader, and would surely mislead a hasty one. One curious point is, however, quite clearly stated; the distant kindred (*cognats* who are not *héritiers légitimaires*, *i.e.*, females and relations through them, other than sharers and residuaries) are

entirely excluded, the property going to the Public Treasury when there are no residuaries (and, it must be understood, no sharers), see p. 429. This is a very remarkable statement, for in the *Minhâdj at-Tâlibîn* (Vol. II., p. 226) the distant kindred are distinctly recognised, and a long classification of them is given. Now it is well known that according to the Hanifite Sunni Law the distant kindred come in, before the Public Treasury, in the absence of sharers and residuaries, but according to the Shafeite Law, as stated in the *Fath al-Qarib*, they do not; it may be added that the *Sirâjiyyah*, a Hanifite Authority (see Rumsey's *Al Sirâjiyyah Reprinted*, 2nd ed., p. 45) distinctly states that "Alshafî, on whom be God's mercy," agrees with those who give preference to the Public Treasury. A difference between Abu Hanifa and Shafei is nothing extraordinary; but it is a singular thing that two highly esteemed works, both on the Shafeite branch of Law, should contradict one another directly on such a vital point. If it be borne in mind that, were the doctrine of the *Fath al-Qarib* to prevail, the State would succeed in preference to a man's own daughter's son, it will at once be perceived what an apple of discord is thus thrown down! Prof. Van den Berg has done good service in bringing this discrepancy before the world; and Anglo-Indian lawyers should prepare themselves for the possibility of having to argue the question, for we are told by Syed Ameer Ali (*Personal Law of the Mahommedans*, p. 20) that there are Shafeites in the Malayan Peninsula, in Ceylon, and in the Bombay Presidency.

Prof. Van den Berg would add much to the practical usefulness of his work if he could find time to supplement it with a good alphabetical Index.

* * *

A British Society of Comparative Legislation.

The foundation, at a Conference convened by the Lord Chancellor at the Imperial Institute, on 19th December

last, of a British sister Society to the very successful and valuable Society of Comparative Legislation established in Paris in 1869, is a matter which calls for congratulatory comment in these pages.

Some twenty years have passed since we made our personal acquaintance with the French Society, and were introduced to its then President, M. Aucoc, now President of the Comité de Législation Etrangère. Since that date we have seen volume after volume of *Annuaire*s both of Foreign, and later, of French Legislation, and of *Bulletins*, issue from the Society's Press. During the latter portion of this period we have also seen something of the very valuable Translations of Foreign Codes, which, by an arrangement with the Comité de Législation Etrangère, a most useful adjunct to the French Ministry of Justice, established in 1876, which has no parallel in this country, have been issued under the editorship of members of the Society of Comparative Legislation, though undertaken at the expense of the Comité, as a national work. We have sometimes wondered that similar bodies were not established in this country, and we therefore hailed with the more pleasure our invitation to the Conference summoned by the present distinguished head of the Legal Profession in England, and this the more so that we remembered having published in our pages an Address on Jurisprudence and the Amendment of the Law delivered by Farrer Herschell, Esq., Q.C., M.P., as President of the Jurisprudence Department of the Social Science Association, at its Congress held at Liverpool, 1876.

Shortly after the account of the foundation of the British follower in the wake of the Société de Législation Comparée appeared in the *Times*, our old friend and contributor, Dr. Thomas Barclay, of Paris, wrote a letter (published in the *Times* of 26th December, 1894), embodying what the *Imperial Institute Journal* for February justly calls a very lucid and succinct account of the work of the Comité de Légis-

lation Etrangère (of which we understand he is the adviser on English Law), as it appeared to him that less was known here of the French Committee than of the French Society. Both, in fact, are labouring for similar objects, viz., the study of the Legislation of Foreign Countries, though they pursue their common object in somewhat different modes, the Society, of course, holding meetings, and reading Papers, while the Committee devotes its main energies to collecting as perfect a Library of Foreign Legislation as it can, and to publishing translations of Select Foreign Codes. In some of these objects we may flatter ourselves we are fellow workers with the French institutions, through the collection of Foreign Maritime Laws, with which our valued contributor, Dr. Raikes, has been for some years past enriching our pages. The close connection between the work of the Society and of the Committee in Paris was perhaps hardly sufficiently brought out in Dr. Barclay's Letter to the *Times*, the fact being, as mentioned by the then President of the Society at the celebration of its twentieth Anniversary in 1889, that each of the Codes published by the Committee of Foreign Legislation bears upon its title-page that it was prepared under the direction of the Society of Comparative Legislation.

We hardly expect to see such a combination of State aided and private enterprise emerge from the meeting held under Lord Herschell's presidency. The idea of State aid, though glanced at by some of the speakers, was practically put on one side as improbable of realisation. At the same time, if the Treasury could hereafter be persuaded of the utility of the work, the French precedent might reckon for at least a grant in aid.

We were glad to notice the personal testimony borne by Sir Raymond West to the value of the Comparative Study of Legislation as he had himself experienced it in India, when falling back, in default of other and more strictly

positive basis for his Decisions, upon Justice, Equity, and Good Conscience. Mr. Ilbert, to whom the credit is due of having set the ball rolling by his valuable Lecture at the Imperial Institute on a Comparative Record of British and American Legislation, on 8th November, 1894, in the course of the remarks which he made at Lord Herschell's Conference, shewed himself also cognisant of the value of the work of the French Society. We are sure that the President and Council of the Société de Législation Comparée, as well as the President and members of the Comité de Législation Etrangère, will hail with a pleasure equal to our own, the formation of a British Society of Comparative Legislation, under such distinguished auspices as those of the Lord High Chancellor of Great Britain, the Lord Chief Justice of England, Lord Justice Lindley, Lord Hobhouse, Lord Thring, Sir Raymond West, Sir Charles Turner, Mr. Cohen, Q.C., and others *quos prescribere longum*.

Reviews.

Le Droit des Auteurs en Belgique. Commentaire Historique et Doctrinal de la loi du 22 Mars, 1886. Par PAUL WAUWERMANS, Avocat à la Cour d'Appel, Bruxelles. (Brussels. Soc. Belge de Librairie. 1894.)

This elaborate volume of nearly 500 pages, written by way of a Commentary on the Belgian Copyright Law of 1886, constitutes, from the mass of information which it contains respecting Copyright in Belgium, including therein the rights of Foreign Authors in Belgium, a valuable addition to the Literature of International Copyright. Its author, combining the position of a member of the Bar of the Court of Appeal in Brussels with that of one of the Secretaries of the International Literary and Artistic Association, at whose foundation we were ourselves present in Paris, in 1878, is possessed of a varied fund of knowledge which he brings ably to bear upon his subject. As a practising Advocate he pays considerable

attention to the Legal forms connected with the enforcement of Copyright, and describes its various phases in a portion of his work, Book VIII., which is entirely devoted to Procedure. Many curious byways of History are trodden by M. Wauwermans in connection with the printing privileges of the earlier masters of Typography, John and Vindelin of Spires, Christopher Plantin, and others, which he shews to have been in the nature of patents rather than of Copyright. The privilege granted to John of Spires by the Senate of Venice was so strictly granted *ad personam*, M. Wauwermans notes, that even his brother Vindelin did not succeed to it. Aldus got his patent, or privilege, on the strength of his new type, that celebrated Aldine, which a notable character among modern English printers, Pickering, so kept before him as his ideal as to deserve the title of *Aldi discipulus Anglus*. The early history of Copyright in Belgium affords M. Wauwermans scope for giving us much curious information. His descriptions of the various periods of History as they affect his subject are terse and often epigrammatic. Thus his account of the state of Literature under the first Empire is dramatically brief and pungent. "People read but little," says M. Wauwermans, "during the fevered period of the Empire: the newspaper killed the book, and the *bulletins* of the Grand Army took the place of the most exciting novels." The controversies as to the nature of Copyright (*Droit d'Auteur*) whether it be more properly a Real or a Personal right, and if a Real right, whether it is not one *sui generis*, are passed in review by our author, who dismisses the Personal right view as practically extinct, and as between the varying and indeed conflicting views of those who hold it to be a Real right of some sort, M. Wauwermans appears to come to the conclusion, as did some distinguished members of the Belgian Chambers, in the debates on the Bill which became the Law of 1886, that it is a mere logomachy. We hope to take up on a future occasion some of the interesting questions raised by M. Wauwermans in his valuable book, the execution of which does the Société Belge de Librairie great credit.

The Imperial Institute Journal, Vol. I., 1895. (Imperial Institute, London.)

We are pleased to be able to call the attention of our readers to the monthly *Journal* which has been commenced with the

New Year as a medium of communication of matters of interest to the Fellows primarily, of course, but also, and that probably in increasing ratio as it gets more widely known, to the man of Science and of Letters, the Commercial man, the Colonist, and the Jurist, generally, whether Fellows or not.

Besides cases on Commercial Law, a feature which might well be extended, the first two numbers of the *Journal*, for January and February, contain notices interesting to the Jurist, and the student of Comparative Legislation and of History, in the accounts of the Lectures by Mr. C. P. Ilbert, C.S.I., on *A Comparative Record of British and American Legislation*, and the subsequent Conference convened by Lord Herschell, at which a Society of Comparative Legislation was founded, and other Lectures bearing on Jurisprudence and History, such as that by Hon. W. Lee Warner, C.S.I., on *The Roman and British Indian Systems of Government*. And the recent Address by Dr. Jameson, C.B., Administrator of the Chartered Company's Territories in British South Africa, at which the Prince of Wales took the chair, as President of the Imperial Institute, deserves the attention of the student of Colonial History and Administration, while the still more recent Lecture on *Village Communities in Southern India*, by C. Khrishna Menon, Lecturer at the Saidapet College, Madras, when it is reported in the March number of the *Journal*, cannot fail to attract the reader of that in many respects peerless work, Maine's *Ancient Law*, and his equally valuable, though less widely known, *Village Communities in East and West*. There is much in the subject of Mr. Menon's Lecture which requires further careful investigation, as it seems to be at least possible, if not probable, that Sir Henry Maine was led unconsciously to overstate the case for the Village Community as an Aryan institution. Mr. J. H. Nelson, in his valuable *Prospectus of a Scientific Study of Hindu Law* (Kegan Paul, 1881), has given what appear to be good *primâ facie* grounds for the belief that the Village Community is an exotic in Southern India, at least, if not also in other parts besides the Madras Presidency. This is an important suggestion, which ought to receive careful consideration.

The History of the Law of Prescription in England. By THOMAS ARNOLD HERBERT, B.A., LL.B., of the Inner Temple, Barrister-at-Law; late Exhibitioner and Scholar, St. John's College,

Cambridge ; Equity Scholar of the Inner Temple, 1889. 1891.
(London : Clay & Sons ; Cambridge : Deighton, Bell & Co.)

If circumstances have prevented an earlier notice on our part of the interesting Yorke Prize Essay for 1890, the author may be assured that the delay has not arisen from any want of appreciation of the result of his labours. The subject of the Prize for 1890 was chosen for the good reason that there was "no book definitely upon Prescription in English Law." If we could have wished to see a treatise telling us definitely the length, breadth, and general characteristics of Prescription at the actual passing moment, we may, nevertheless, rejoice at the appearance of a book which summarises the materials from which such a book may yet be constructed. It should be recorded further, in the author's favour, that he does not slavishly follow the opinions of others, but fearlessly states his own view when it differs from those of older writers.

That a book of this kind must contain a large amount of obsolete law is obvious from the very title, and for this the author of a "History" cannot be blamed ; here and there, however, we feel inclined to quarrel a little with Mr. Herbert for not distinguishing more clearly between defunct and existing law. We by no means wish to suggest that any confusion exists in the author's own mind, but he is not, perhaps, quite indulgent enough to readers who have not studied the subject as he has. Early in the book some points are stated about a "fine with proclamations," and the author does not mention the fact that fines have ceased to exist. Occasionally, too, there is a little want of preciseness of language, as where, for instance, we are told that under a certain Act, it was "necessary to give evidence of enjoyment within the last 60 years for about 30 years," and where, in treating of a later Act, we read several paragraphs about the "Prescription Act," but only learn by chance that the Act 2 and 3 Will. IV., c. 71, is the statute so designated. In reading about the same Act we find in a quotation from a judgment of Malins, V.C., the words "the period is fixed at twenty years," and, as the author is there treating of sect. 1, under which the periods are thirty or sixty years according to circumstances (sect. 2, under which the period is really twenty, being only mentioned later), there is an apparent contradiction which might confuse an inexperienced reader. Mr. Herbert has to mention several times a

"Prescription in a que estate," and it cannot be said that he defines it very clearly (for the uninitiated) by adopting the old phrase that it is a prescription alleged by the claimant as having been enjoyed by himself, "and those whose estate he hath," or "*tous ceux que estate il ad.*" As to this, Mr. Herbert may indeed reply that he did not write for the uninitiated; but we scarcely think he will take that ground, for the Essay, though written for learned examiners, is published for the world in general.

The historical character of the book, if it detracts something from its immediate and practical usefulness, necessarily adds much to its antiquarian interest. In treating of the difference between tithes and other property, the author cites a quaint passage beginning "but now note a strange *anomalum* in this case, Tythes differing from all other cases in Law." In another place we find the lord of a manor suing for £3 os. 9d. "for pound breach," and a judgment—in that quaint mediæval Law French which is so much more akin to the school of Stratford-at-Bow than to that of Paris—laying down that Prescription for such a custom cannot be against "*chescun estranger*," but that "*si le custome fuit que chescun tenât q tient del manoir enfrent le pound il payera £3 os. 9d. cest bon custome p ê q il poit av loial commencement.*" Elsewhere there is a good deal about sporting franchises, and, in connection with these, about Acts for the limiting the following of game; and it is curious to notice that, in the year 13 Richard II., laymen not having lands to the value of 40s., and priests not having lands to the value of £10, were forbidden to keep dogs, &c., for hunting deer, hares, conies, or other "gentlemen's game," partly because it was found that "divers artificers," &c., were wont to hunt in parks and warrens "on the holy days when good Christian people be at Church hearing divine service," and partly because such hunting was sometimes used as a mere pretence for "conferences and conspiracies for to rise and disobey their allegiance." Poor Richard II.! Perhaps at that time he little dreamed of conferences and conspiracies far more serious than a Sunday frolic, which were destined to bring destruction on his crown and life! Mr. Herbert's book is provided with a good Index; but it might be improved in a future edition by placing the numerous sub-heads on separate lines and arranging them alphabetically among themselves.

THE LAW MAGAZINE AND REVIEW.

No. CCXCVI.—MAY, 1895.

I.—THE LATE MR. C. H. E. CARMICHAEL.

IT is nearly thirteen years since the *Law Magazine and Review* lost through the death of the late Professor Taswell-Langmead an excellent Editor; but

Primo avulso non deficit alter

and the Editorship of the periodical has since then been worthily continued by the college friend and literary colleague of Professor Taswell-Langmead, viz., by Mr. Charles Henry Edward Carmichael, the subject of this Memoir.

Mr. Carmichael was born on January 9th, 1842. He was the only son of Charles Montauban Carmichael, C.B., a General in the Indian Army, and a Knight of the Third Class of the Dooranee Empire or Kingdom of Cabul, who, having been Colonel of the 20th Hussars, had distinguished himself by his military services during the first Afghan war. His mother, Mary Eliot, was the daughter of Captain Allan Graham, of the Bengal Artillery.

Mr. Carmichael entered at Trinity College, Oxford, where he matriculated in 1861 (April 16th), then aged 19, taking his B.A. in 1865 and his M.A. in 1869. He was the Taylorian University Scholar in Modern Languages in 1862, and took a second class in Law and Modern History in 1865. It had been intended that he should enter the Indian Civil Service, and he became a selected candidate in 1862 for that department, but fearing that his constitution could

not undergo the trying climate of India, and acting under medical advice, he resolved instead to dedicate himself to literary work in this country. In January, 1876, he became a member of the Inner Temple, and so continued to his death. It would be difficult to enumerate the prodigious amount of literary work which he accomplished. Besides undertaking the editorship of this Magazine (in which he was assisted until recently by Mr. W. P. Eversley, B.C.L., M.A.), he acted as Foreign Secretary to the Royal Society of Literature, was one of the International Secretaries of the Association for the Reform and Codification of the Law of Nations, and Foreign Corresponding Member of the Society of Comparative Legislation of Paris. He also edited, after the death of Professor Taswell-Langmead, the third and fourth editions of his friend's well-known work, "English Constitutional History," successfully maintaining the high standard of excellence attained by the author, while as sub-editor of *Notes and Queries*, his ample store of knowledge did much to elucidate the otherwise searchings in the dark of its readers.

In 1890 (April 17th) he married Harriet, daughter of Mr. William Morley, of Castleacre, near Swaffham, Norfolk, the ceremony being performed in London, at St. John's Church, Walham Green.

Mr. Carmichael was descended from a long roll of ancestors. The name Carmichael is territorial, and was assumed by his family as Lords of the Barony of Carmichael in the Upper Ward of Lanarkshire. They claim the dormant titles of Earl of Hyndford, Viscount Inglisberry and Nemphar, and Lord Carmichael, of Carmichael (1647), with the Baronetcy (Nova Scotia) of 1617. James Carmichael, M.D., F.R.S., Physician Extraordinary to King George III., assumed the name of Carmichael-Smyth, which name was retained by the family until 1841, when it was dropped by Royal licence. The uncle of Mr.

Carmichael, Major-General Sir James Carmichael-Smyth, C.B., K.C.H., K.M.T., and K.S.W., was an eminent soldier, and served on the personal staff of the Duke of Wellington at Quatre Bras and Waterloo.

Mr. Carmichael's name may be added as one more victim to the baneful scourge, influenza. Attacked by that insidious malady, he succumbed to it after a brief week's illness on March 2nd last, notwithstanding all that eminent medical skill, and the untiring nursing of a devoted wife could do in their endeavours to save him. He is buried in Fulham Cemetery. Peace to his ashes! A kind friend, a good husband, a genial companion, a man of deep religious conviction, a scholar of no mean attainments, was Mr. C. H. E. Carmichael, lost to this world at the comparatively early age of fifty-three.

*Linquenda tellus, et domus, et placens
Uxor ; neque harum, quas colis, arborum
Te, præter invisas cupressos,
Ulla brevem dominum sequetur.*

II.—THE WATER COURT OF SALTASH.

MANY of our readers may not be aware that the Lord High Admiral of England, now represented by the Lords Commissioners of the Admiralty, has a civil as well as a naval character. It is by virtue of the former character that he appoints those magisterial officers termed Vice-Admirals of the Coast, who have power to hold Maritime Courts and to try issues between merchants and seamen, and to keep the peace on the coasts of all Maritime counties of Great Britain, Ireland, or colonies where they may be appointed, as well as to perform other duties of an executive character, such as the impressment of seamen to serve in the Royal Navy. Formerly, these

Vice-Admirals of the Coast, in the person of their Vice-Admiralty Judges, held the Courts on the sand of the seashore, or on some beach, quay, or wharf adjoining tidal waters. But as time went on, discretion required that these Courts should be held in maritime towns for the conveniency of suitors. Although the 13 Richard II., St. 1, c. 5, passed in 1389, and the 15 Richard II., c. 3, passed in 1391, restrained the Admiralty Courts from holding pleas of things arising in the body of counties, yet, as Sir H. Spelman observes, it did not restrain the Admiralty from making execution upon the land. The body of the Realm and of every county are places *accidentally* subject to the Admiralty; therefore the Admiral may take the body in execution upon the land, and so by the better opinion may he do of goods. In the fourth year of Henry IV., 1402, a petition of the Commons to the King has for answer that: "The Admiral and his Lieutenants do sit to keep their Courts in no liberty or town, but only upon the sea coasts or arms of the same, and that every plea before them may be determined in one place without adjournment" (Cotton's Tower Records, p. 421). The accustomed place in Southwark in the beginning of the 15th Century, to hold the Admiralty Court, was a quay on the Southwark side of the river Thames. But Stow, in his Survey A.D. 1598, says: "A part of this parish church of St. Margaret (St. Margaret's-on-Hill, Southwark) is now a Court wherein the Assizes and Sessions be kept, and the Court of Admiralty is also there kept." In the reign of Henry VII., Orton quay, near London Bridge, is mentioned in the records of the Court of Admiralty as the usual place of sitting.

In the country the same prevailed. The Admiralty Court held by the Judge of Vice-Admiralty of the coast or county was sometimes in a church, as at Dover, or on a quay, or, as we have said before, on the sand of the seashore. There

is a record extant (but in private hands) of a Court of Admiralty, otherwise called a Water Court, being held in the reign of King John on the Chesil beach, near Weymouth. It was by no means uncommon for the Crown, from time to time, to exempt by Charter a city or borough from the Admiralty jurisdiction of the Vice-Admiral of the County, and to confer a special jurisdiction on such city or borough of trying its own Admiralty cases. Thus a Charter of Henry IV. exempts the Mayor and Commonalty of Bristol from the jurisdiction of the Admiralty of England, in consideration of the sum of £200 given to the King "in his necessities." Again, Queen Elizabeth conferred an Admiralty jurisdiction on Great Yarmouth by Charter, and the bailiffs of the Borough were ordered to hold an Admiralty Court every week, power being bestowed on them similar to that of a Vice-Admiral of the Coast. The last Admiralty Sessions held by them were in 1833, for the trial of pirates, *i.e.*, two seamen who technically deserved that name for stealing some goods out of a ship upon the high seas within the Yarmouth jurisdiction. The jurisdiction of trying its own Admiralty cases was also bestowed on Dublin by Queen Elizabeth, and she bestowed the same power on Galway. The Prince of Wales has Admiralty rights within the Duchy of Cornwall, and the Mayor of Southampton is Admiral of the liberties of that Borough from South Sea Castle to Hurst Castle. Again, by Charter of 12 Henry VIII., Poole was excepted from the jurisdiction of the Admiralty of England, and the Mayor was the Admiral within that liberty. The exclusive jurisdiction of Boroughs in Admiralty cases was abolished in 1835 by section 108 of the Municipal Corporations Act.

But notwithstanding the abolition of Admiralty rights in Boroughs, the Borough of Saltash, in Cornwall, continued to hold its Water Court until the 27th July, 1885, although the Admiralty Jurisdiction in Boroughs had

been abolished, as we have seen, so early as 1835, or 50 years before.* The important Court of Admiralty Jurisdiction, or Water Court, had then, as we can well imagine, dwindled down to very small dimensions. The *Western Morning News*, on the following day (July 28th), says: "After the meeting (of the Town Council) the Mayor (Mr. W. Shaddock), the Justice (Mr. W. Gilbert), and the Town Clerk (Mr. F. W. Cleverton), preceded by the two Town Serjeants, bearing the antique silver maces of the Borough of Saltash and the Liberty of the Water Thamer, walked in State to a spot on the beach, almost underneath the suspension bridge. The senior town serjeant having called for silence while the Court was being held, under pain of imprisonment, the Town Clerk read the Royal Proclamation, the officials meanwhile standing bare-headed. The sum and substance of it was that all those who had anything to do with the Water Court 'must draw near and give their suit and service.' Forthwith, some fishwomen advanced with trays bearing salmon peel, bass, whiting, prawns, &c., which were laid at the feet of the Mayor as the gift of the loyal inhabitants, and were forthwith accepted. The senior fishwoman claimed that the same service had been rendered by members of her family for the past 127 years. At the conclusion of this performance cheers were given and the officials returned to the Town Hall, where wine and light refreshments were provided in accordance with custom."

Such is the account given in the press of the adjacent town of Plymouth. But it may be interesting to the archæologist to know under what power this Court has been held. It is said to have dated from the time of King John. Queen Elizabeth granted a Charter of Incorporation to Saltash, on the 19th June, in the 27th year of her reign.

* Perhaps the Court was held after 1835 with regard to matters happening within the Liberty of the Water Thamer, without the precincts of the Borough.

By this Charter the Borough was incorporated under the name of "The Mayor and Free Burgesses of the Borough of Saltash." This Charter was confirmed on the 11th February, in the 30th year of Charles II. These and other Charters, however, were surrendered by the Borough to the King, in the Court of Chancery, in order that a new Charter free from certain omissions and ambiguities should be granted. This new Charter was granted on the 27th November, in the 35th year of Charles II. (1684). This Charter after reciting that Saltash is a seaport town on the confines of the County of Cornwall, situated near the main sea, and having in it a secure and sufficient harbour that many ships from time to time put in there to the great advantage of the adjacent county, that it is requisite to promote and take care of the strength and security of this ancient harbour, and that the King's peace and all acts of justice may without any further delay be kept and accomplished in the Borough, grants that the village of Saltash shall be for ever a free Borough, and that the Mayor, Aldermen, and Free Burgesses and their successors shall be a body incorporate and politic by the name of "The Mayor and Free Burgesses of the Borough of Saltash." The Charter further grants to the Mayor and Free Burgesses and their successors to hold for ever "The Village and Borough of Essa, otherwise Saltash," as also "The passage of the Saltash," and all Courts within the Borough and the water bounds and limits of the same, with the profits howsoever arising in such Courts; further the toll of oysters and of merchandise, with power to take from every barge or boat carrying sand twelve pence a year, and from every boat carrying a drag-net twelve pence a year, with many other privileges, among which should not be forgotten that of claiming from the heirs of Lord Brooke twenty-two pence and four oars belonging to the boats of "The passage of the Saltash."

In return for these privileges the Mayor and Free Burgesses are to pay to the Duchy of Cornwall, into the hands of the Receiver-General at Lostwithiel, the sum of £18 by half-yearly payments at Easter and at Michaelmas.

The Charter also appoints the Mayor for the time being the Clerk of the Market and Coroner as well within the Borough as within the creeks of the same.* Further there are provisions for a Court of Quarter Sessions, for two weekly markets, for two yearly fairs, one the day before the Feast of St. James the Apostle, and lasting for three days, and the other beginning on the day before the Feast of the Purification of the Blessed Virgin Mary, and also lasting for three days, right to have a gaol, and to return two Members of Parliament. Many of the foregoing privileges and immunities are common to Charters of other Boroughs ; the right, however, of holding an Admiralty or Water Court is uncommon and worthy of a special record. The grant is as follows :—" We have granted also and by these Presents for Us, our Heirs and Successors do grant to the said Mayor and Free Burgesses of the said Borough of Saltash that they and their Successors for ever may have and hold yearly two Water Courts or Sessions upon the Water there called Thamer, with its appurtenances on the place and on the days accustomed (to wit) one Court on the day after the Feast of the Blessed Virgin Mary, and the other Court the day after the Feast of St. James the

* The last instance of the Mayor (Mr. W. Shaddock) exercising the duty of coroner was on the 22nd July, 1885, in the case of the collision off the Cornish coast between H.M. ship *Hecla* and the steamship *Cheerful*, which resulted in the loss of the latter vessel with eleven of her passengers and crew, during a thick fog, at 4.10 a.m., when 25 miles N.N.E. of the Longships. David Jones, second mate of the *Cheerful*, and Mrs. M. Houlbrook, one of the passengers, were picked up dead by the *Hecla*. The mayor held the inquest on board the *Hecla* when that ship was within the Liberty of the Thamer ; but as he was without jurymen he called a sufficient number of officers and men of the *Hecla* to constitute a jury.

Apostle. And that all masters and owners of all ships, barges and boats, and any vessels catching and having fish, oysters, or any other profits and advantages within the Precincts, Limits and Bounds of the said Water shall do suit and service at the same Courts. And that the said Mayor and Free Burgesses shall then and there be able to Elect, Appoint and Swear twenty-four honest and lawful men to make inquisition for Us, our Heirs and Successors concerning all Transgressions and Malefactors within the Bounds and Limits of the said Water, and them to present upon their Oath, and to punish and correct Malefactors and Transgressors as from time to time out of mind they have been accustomed."

The rota of proceedings at the Water Court is as follows :—One of the sergeants-at-mace makes proclamation thus : "Oyez, Oyez, Oyez, Borough of Saltash and Liberty of the Water Thamer ; all manner of persons having or who have anything to do at the Water Court or Sessions upon and for the Water Thamer, with the appurtenances and the liberty and bounds, limits and precincts thereof now here holden, draw near and give your attention, answer to your names when called on, and save your fines and recognizances. All persons are required to keep silence while the Court is proceeding upon pain of imprisonment. God save the Queen." The jury of twenty-four men were then sworn to make presentments of all transgressions and malefactors within the Water Thamer. The next proclamation was as follows :—"Oyez, Oyez, Oyez. All masters and owners of all ships, barges and boats, and any vessel catching and having any fish, oysters, or any other profits and advantages within the liberty, precincts, bounds and limits of the Water Thamer draw near and do your suit and service at this Court as anciently hath been accustomed." At this point the fishermen did their suit and service by presenting fish to

the Mayor and Corporation. In later years, this offering, although presented as usual, appears to have been paid for by the Corporation. The third proclamation was as follows:—"Oyez, Oyez, Oyez. If anyone can inform the Mayor of this Borough or this Court now here holden of any transgressions committed within the liberty and bounds, limits and precincts of the Water Thamer, or any other matter or thing to be enquired into, done, or performed at this Court now here holden, let them come forth and they shall be heard."

It would appear that the proceedings in this Admiralty Court were of the same character as those in any Court of a Vice-Admiral of the Coast ; * that is that the proceedings

* The following is an extract from the Protocols of a Vice-Admiralty Court held at Manningtree in Essex in 1635. They are written in Latin, and I translate them thus: "A Court of Admiralty for the County of Essex held at Manningtree on Saturday, the 9th day of the month of January, A.D. 1635, before Master Richard Pulley, Deputy of the Worshipful Robert Earl of Warwick, Vice-Admiral for the said County, in the presence of George Smith, Notary Public. (Then follow the names of the constables of every parish within the County who attended to make a return of the defaults justiciable by the Court.) On which day and place the precognition having been made as is customary, and the constables having been called to produce the precept and the list of those summoned by them. From among all and singular appearing these following were chosen as jurors and were sworn by the Holy Gospels of God as is customary." The jury made no presentments, but at a similar Court held the following year at the same place on Wednesday, the 20th day of April, 1636, the jury having been sworn as above, presented as follows: "To the fifth article we present certain ship's rigging and provision found and taken up in the sea by Roger Coeman, of Harwich, coming from Newcastle. And also we present certain ship's rigging and provision found and taken up by Edward Lee and William Lee of the same place coming from Newcastle. Also we present a fore-mast taken at sea by Hugh Paine, of St. Oseth, and now in the possession of William Lumley, of St. Oseth, carpenter, worth five shillings." The articles on which the jury were sworn to enquire will be found at length in "The Office of Vice-Admiral of the Coast," by Sir Sherston Baker, Bart. (London: privately printed 1884), page 84; also a full account of a Vice-Admiralty Court for the counties of Chester and Lancaster, held in the City of Chester in 1635, at page 96 of the same work.

would have followed the rules of the Civil Law, based on the Roman Law, not of the Common Law. In the early days of our history all offences and matters in the Admiralty Courts followed the precedence and rules of the Civil Law, but in 1536 a great change was made by 28 Hen. VIII., c. 15, which, without changing the nature of the offences, directed that traitors, pirates, thieves, robbers, murderers, and confederates upon the sea should be tried by the Common Law of England. Although these more heinous crimes were directed by the statute to be tried, and were tried, by the Common Law, a considerable number of less grievous yet serious offences remained without the scope of the statute, and were still tried (and doubtless might be tried to this day) according to the Civil Law. Vice-Admirals of the Coast are still appointed, and in the last century held in the person of their respective judges, "Common Courts" and "Courts of Enquiry." The former were held from tide to tide, or from time to time as occasion required. In such Courts they gave remedy—justice commutative—between (a) merchants, (b) owners of ships and merchants, (c) other persons and owners of ships, (d) any persons concerning any matter done or to be done upon the sea or in public and navigable streams, and in parts beyond the sea. They also heard and determined all causes, offences, and maritime business arising within their respective jurisdictions. By the tenor of their commissions they were directed to try all offences or causes which came within their jurisdiction, according to the Civil and Maritime Laws and Customs; and this notwithstanding that offences committed in creeks and ports within the body of a County were always cognisable by the Common Law.

It was also given by the above Charters to the Mayor and Free Burgesses of Saltash to make perambulations of the precincts, limits and bounds of their Jurisdiction, a

power very frequently given by Charters to the inhabitants of Boroughs without a water Jurisdiction, and vulgarly called to "beat the bounds." At Saltash this duty occupied two days. On the first day the Mayor and Corporation assembled in the Town Hall, and from thence proceeded to the Town Quay, where, after swearing in twenty-four jurymen, the following proclamation was read : "Oyez, Oyez, Oyez. Borough of Saltash and Liberty of the Water Thamer. All persons are required to keep silence while this Court is proceeding upon pain of imprisonment." The Mayor and Corporation and Jury then went from the Town Quay to Coombe boundary stone where the following proclamation was read : "Oyez, Oyez, Oyez. Be it remembered that this boundary, known as Coombe, and all water courses adjoining thereto, belong to the Liberty of the Water Thamer. God save the Queen." They then followed the water course to Cowders, where a similar proclamation, substituting Cowders for Coombe, was read. They then made a straight line to Longstone, where a similar proclamation, with the requisite substitution of names, was read. From Longstone they went to South Pill water course, where a similar proclamation was read. From South Pill they went to Salter Mill boundary stone, where a similar proclamation was read. The Corporation then walked under the cliffs back to Saltash.

The procedure on the second day was as follows: The Mayor, Corporation, and Jury assembled in the Town Hall, and thence rowed up the river Lynher so far as St. German's Quay, where is a large rock with a hole in it, which is the boundary mark; here a similar proclamation to that read the day before, *mutatis mutandis*, was read. Thence the procession returned down the Lynher and went up the river Notter to a place called Driller's Quarry, where a proclamation as before was read. From Driller's Quarry

they came down the rivers Lynher and Thamer to Barnpool, where a proclamation is read as before. From there they went to Cawsand Bay, where at the Watery Orchard the proclamation was read. Thence they went across the Plymouth Sound in a straight line to the Shagstone or Shacklestone; thence they came in by the east end of the Plymouth breakwater to the Cobler Buoy; thence up the Cattewater to the Bear's Head; thence to Prince Rock; thence they returned to the Plymouth Barbican; thence to Millbay Pier, upon which they landed. Thence they went up the Stonehouse Lake as far as Mill Bridge; thence to Mutton Cove, Devonport; thence to North Corner, Devonport; thence to John Street, Morice Town; thence up the Thamer to Western Mill Lake; thence to Saltash Passage on the Devon side; thence up the river Thamer as far as Weir Point; thence to Cargreen; thence to Holeshole; thence to Lifter; thence to Alton Quay; thence to Cothele Quay; thence to Calstock; thence to Okle Tor, near Morwellhan; thence they returned down the river Thamer, and went up the Tavy to Warleigh; thence to Maristow, opposite to which is a boundary stone known as Oldman's Beard; thence they returned down the rivers Tavy and Thamer, and went up the Moditonham Lake, at the head of which, as well as at all the places hereinbefore mentioned, similar proclamations were read; after this they returned to Saltash.*

In the reign of George III. the Corporation of Saltash was dissolved through circumstances which are not of public interest; thereupon a new Charter of Incorporation was granted to Saltash by the King on the 7th day of June, in the fourteenth year of his reign (1774). This Charter confirmed and re-granted all the former privileges and immunities of Saltash and their jurisdiction over the

* In more recent years the party proceeded in a steamer instead of by boats.

Water Thamer. The clause relating to the holding of the Water Courts is in precisely the same language as the clause in the earlier Charter of 1684, which we have already adverted to.

SHERSTON BAKER.

III.—FOREIGN MARITIME LAWS: V. PORTUGAL.

TITLE VII.

Collisions.

ART. 664. When a collision is purely accidental or caused by uncontrollable circumstances there is no claim for any compensation.

B. 228, F. 407, G. 737, H. 536, 540, I. 660, S. 830, 832, Sc. 221. E. 242 (1).
See Art. 669, *post*.

665. When a collision is caused by the default of one of the ships, the damages sustained will be made good by that ship.

B. 221, F. 407, G. 736, H. 534, I. 661. E. 242 (2), S. 826, Sc. 220.

666. When there is blame attaching to both vessels, the whole of the damages sustained are added together, and payment of the amount apportioned between the ships in proportion to the amount of blame attaching to each.

B. 229, F. 407, G. 737, H. 535, I. 662, S. 827, Sc. 220.

667. When the collision is caused by default on the part of a third ship and cannot be avoided, such [third] ship is liable.

G. 741, I. 664, S. 831.

668. When it is doubtful which of the vessels caused the collision, each will bear its own loss, but both are liable jointly and severally for damage sustained by the cargoes and for compensation payable for personal injuries.

F. 407, G. 737, H. 538, I. 662, S. 828, Sc. 221.

669. A collision is presumed to be accidental except when there has been a breach of the Regulations for Preventing Collisions at Sea, or of special Harbour Regulations.

Sc. 219.

670. If a ship which has been damaged in a collision is lost on her way to a port of refuge for repairs, she is presumed to have been lost in consequence of the collision.

G. 739, H. 539, S. 833.

671. The liability of the ships provided for in the preceding Articles does not exempt the actual wrong-doers from their liability to the person injured and to the shipowners.

G. 736, I. 663, S. 829.

672. In any case in which the Commander is liable, if the ship at the time of the collision and in observance of regulations, was under the direction of a harbour or coasting Pilot, the Commander has a right to compensation from the Pilot or the Pilotage Corporation, if there is one.

B. 228, G. 740, S. 834.

Reading Articles 671, 672 and Art. 492 (4) and 492, § 3 together, it appears that if the Pilot is compulsorily employed, he is directly liable, to the exclusion of the shipowner, and if voluntarily, or in pursuance of a custom or regulation not having the force of law, he or the Corporation is indirectly liable for the results of his want of skill or negligence.

The previous Articles have spoken of the ship as liable, but having regard to this Article and Art. 492, *ante*, and the fact that "collision" is not one of the matters giving a privileged claim on the ship (Art. 578, *ante*), it would appear that in this Title "Ship" is only used, as it frequently is in Great Britain, to designate the liability of those on board and through them the owner except in the specially excepted cases specified in Art. 492.

673. Claims for losses and damages occasioned by a collision between ships must be made before the proper Local Authority of the place where it happened, or of the first port that the ship reaches after it, within three days, under pain of being barred.

§1. Default in making a claim does not, so far as personal injuries and damage to cargo are concerned, prejudice

those concerned who are not on board or who are prevented from expressing their wishes.

B. 231, F. (1891) 436, I. 665, S. 835, 836, Sc. 323, 325.

674. Questions about collisions are decided as follows:—

- (1.) When they happen in harbours or territorial waters, by the law of the place.
- (2.) When on the high seas, and between vessels of the same nationality, by the law of that nation.
- (3.) When on the high seas, and between vessels of different nationalities, each is governed by the law of its own flag, and cannot recover more than that law allows.

675. An action for loss and damage arising from a collision may be commenced either in the Court of the place where the collision happened, or in that of the domicile of the owner of the vessel proceeded against, or in that of the ship's home port, or in that of the place where the ship may be.

B. 232, I. 665, Sc. 323, 325.

TITLE VIII.

*Salvage and Assistance.**

ART. 676. No one is allowed to take possession of wrecked vessels or of wreckage, or of cargo or any goods, or other private property which are washed ashore by the sea, or picked up on the high seas.

H. 546, I.M.M.C. 125.

677. Anyone who saves a ship or goods that are wrecked and does not at once deliver them to the owner or his

* The distinction between "Salvage" and "Maritime Assistance" runs with more or less clearness through most of the Continental Codes, but is nowhere defined as clearly as in Articles 681, 682 of this Code, and Articles 561 and 562 of that of Holland, from which latter the Portuguese law on this point appears to be taken; the distinction is unimportant when the award rests entirely in the discretion of the Court, as in Portugal and England.

representative on demand and on giving bail for the salvage expenses, will forfeit all claim to an award for assistance or salvage, and will be liable for damage occasioned by his retention of them, without prejudice to Criminal proceedings if there is ground for them.

H. 548.

678. Anyone who salvages or recovers a ship or goods at sea or ashore in the absence of its owner or his representative, and when they are unknown, must at once remove and deliver the property to the Custom House Official of the nearest place to that at which the property was salvaged, and if he does not do so, will forfeit any right he might have to any salvage or assistance award, and will be liable for losses and damages, without prejudice to Criminal proceedings if there is ground for them.

H. 550, I.M.M.C. 125.

679. The salvage of ships aground, in peril, or wrecked, as also of goods cast ashore, whether the Commander is present or absent, must be carried out under the supervision of the proper authority.

§1. The following are the duties of the person in authority:—

- (1.) To draw up an inventory of the salvaged property and take proper steps for its preservation.
- (2.) To order a sale of such articles as are unclaimed and liable to deteriorate, or the preservation and custody of which is clearly contrary to the interests of the owner.
- (3.) To advertise within eight days next after the salvage in a local newspaper, or in one published in the neighbourhood, full particulars of the disaster, pointing out the marks and numbers on the goods and inviting those concerned to claim them.
- (4.) To report to his superior what has happened, and what steps he has taken.

(5.) To do everything else that special regulations may order.

H. 551-555, I.M.M.C. 123.

680. When the owner or his representative appears and claims the goods, the salvaged property or their proceeds will be delivered to him when he proves his title and pays the salvage award and other charges, or gives sufficient security for them.

§1. If the claimant's title is doubtful, or there is an intervention of third parties, or a dispute as to the salvage award, the parties will be sent before a Judge.

§2. If no claimant appears in answer to the advertisements mentioned in clause (3) of the preceding Article, the salvaged property will be sold by public auction, and the proceeds, after deducting salvage charges, will be placed in a Public Bank.

H. 556.

681. Salvage awards are due :—

- (1.) When ships or goods are found derelict on the high seas or on the shore, and are salvaged or recovered.
- (2.) When goods are salvaged from a ship which is ashore or stranded on rocks, and in such danger that she offers no safety to her cargo or refuge to her crew.
- (3.) When goods are got out of a vessel practically broken up.
- (4.) When a ship in imminent peril and offering no further security is abandoned by her crew, or in their absence is taken possession of by persons who endeavour to save her and bring her into port with the whole or a part of her cargo.
- (5.) When a ship and cargo, either together or separately, are got afloat or brought into a safe port by the aid of third parties.

G. 742 H. 562, Sc. 224.

682. Assistance awards are due :—

- (1.) When a ship which is stranded or ashore is got off and afloat with its cargo with the assistance of third parties.
- (2.) When a ship in distress at sea is helped and brought into a safe port with the assistance of third parties.

G. 742, 749, H. 561, Sc. 224.

683. The following cannot claim salvage or assistance award :—

- (1.) Members of the crew.
- (2.) Those who force their services.

G. 752, H. 545, I.M.M.C. 120.

684. All contracts made whilst the danger exists may be repudiated on the ground of being excessive, and reduced by the Judge who has jurisdiction.

G. 743, H. 568, I.M.M.C. 127, Sc. 227.

685. If there is no agreement, salvage and assistance awards are made by the Judge who has jurisdiction, having regard to the rules of equity and taking into account especially the following circumstances :—

- (1.) The nature of the service.
- (2.) The zeal displayed.
- (3.) The time occupied.
- (4.) The services rendered to ship, people and goods.
- (5.) The expenses incurred.
- (6.) The injuries sustained by the salvors or helpers.
- (7.) The number of persons actively engaged.
- (8.) The peril to which such persons were exposed, as also their ship and its value.
- (9.) The peril which threatened the ship, the people, and the goods that were saved.
- (10.) The actual value of the saved property, deducting expenses.

G. 744, 746, H. 561, 563, I.M.M.C. 126, 121, 134, Sc. 225.

686. An award of salvage or for assistance includes all expenses incurred by the salvors or helpers, but does not

include fees, charges, dues, and taxes, or charges for the custody and preservation of the salvaged property, or for the valuation and sale of it.

§1. An award for assistance is made at a lower figure than one for salvage.

§2. The value of the property salvaged only exercises a secondary influence on the amount of the award.

G. 745, H. 561, Sc. 226.

687. When many persons take part in rendering services to a ship or her cargo, the award must be apportioned in proportion to the services of the people themselves and of the things employed in the said services.

§1. In doubtful cases, the award will be apportioned to each individual.

§2. Those who have exposed themselves to danger in rendering life salvage are admitted to a share in the award made under the above-mentioned conditions.

G. 750, Sc. 228.

688. When the salvage service or assistance is rendered by another ship, half the award belongs to the owner, a quarter to the Commander, and a quarter to the rest of the crew in proportion to their respective wages, unless otherwise agreed.

G. 751, Sc. 228.

689. The owner of salvaged property is not personally liable to pay salvage or assistance awards.

§1. A consignee holding a Bill of Lading is personally liable up to the value of the goods which are delivered under it.

G. 755.

690. Salvage or assistance in harbours, rivers or territorial waters, will be rewarded in accordance with the laws of the place where it is effected, and on the high seas in accordance with the law of the salving or assisting ship.

691. Claims for salvage awards or for assistance may be brought either in the Court within the territorial jurisdiction

of which the service was rendered, or before the Judge of the place where the owner of the salved property is domiciled, or before the Judge of the ship's home port, or of the port where she may be.

G. 756, H. 567, I.M.M.C. 126.

* * It may be remarked, as a final note to the Portuguese Code, that by a Decree of 29th March, 1890, Tribunals of Commerce were established in all places where there was already a Court of First Instance, which means practically, so far as the Maritime Jurisdiction is concerned, in any port visited by foreign vessels. The Court is composed of a Judge, who is a lawyer, and a Jury selected or elected by the traders of the place.

Following the example of France and Italy, a Decree of September 15th, 1890, grants premiums on the employment of vessels under the Portuguese flag.

F. W. RAIKES.

IV.—THE WARS AND THE FINANCES OF THE INDIAN GOVERNMENT.

IN an article recently published in this Magazine the writer, after reviewing the critical condition of things in India—her growing financial embarrassments, the degradation of her Law Courts presided over by Government Servants as Judges, her Legislature stripped of the Constitutional privilege of free deliberation, and the disastrous line of action pursued by her Government in the matter of foreign wars—submitted the following remark regarding the question as to how India is to be extricated from her perilous situation:—"The first step which her history suggests is that the arbitrary power wielded by the Indian Secretary of State should be checked at once, and

his legitimate authority be strictly defined; that the Minister himself should be made practically amenable to an independent Court of Justice, and be subject to a personal prosecution for every act exceeding the limit of his authority."

This proposition, the principle of which is not likely to be questioned, may, however, in view of the difficulty of carrying it into effect, be looked upon as a truism possessing little practical utility. The difficulty of the task is certainly very considerable, seeing that Parliament is the only Constitutional authority to which the Indian Secretary of State is responsible, and that his responsibility to that body is virtually neutralised by the support he has acquired in the British Legislature through the sacrifice of Indian interests conceded to the Constituencies by whom Parliament itself is ruled. On the other hand the danger of the situation in India is great, and may any day become overwhelming, as no effort is made to arrest the evil, and the exercise of arbitrary power not only violates the British Constitution, but raises an unsurmountable barrier to the introduction of reform. Under these circumstances it seems of little avail to discuss measures of economy and administrative improvements, so long as the laws are disregarded by the Executive and the resources of India are wasted in unprofitable wars by the arbitrary powers assumed by her Government.

The straits of the Indian Exchequer, the interference of the Executive with the decisions of the Law Courts, the official pressure under which the majority of the Indian Legislature are made to vote in obedience to the orders of the Secretary of State and regardless of their conscience and convictions—these crying evils have been exposed and widely discussed of late, both in this country and in India; and it may therefore not be necessary to enlarge on them in this instance. But the action of the Government in the

matter of trans-frontier wars does not appear to have received the attention which it loudly claims. The incidents and issues of those wars are imperfectly known to the public, in consequence of despatches of commanding officers and other important papers on the subject being sedulously withheld by the Government of India. The following statement may, therefore, cause surprise to a great many readers.

During the last seventeen years, no less than twenty British expeditions invaded the borderlands of Afghanistan for the purpose of subjugating their inhabitants, but without having accomplished that purpose in a single instance. Thousands of fanatical tribesmen, who resisted the yoke, were shot down by our superior fire-arms; numberless villages were burnt or blown up; crops were destroyed; cattle captured, and the inhabitants of those villages were left to perish of hunger and exposure; but nowhere was British authority accepted, and it was exercised only in the limited spaces occupied by our troops, ceasing immediately on the departure of our soldiers.

While these unprovoked and (politically as well as morally) unjustifiable attacks on our neighbours have engendered resentment and distrust towards the British, the heavy cost of the expeditions, by inordinately increasing the military expenditure of the Indian Government, has led to the imposition of oppressive taxes and the illegal proceedings of fiscal officers in India—evils resulting directly from the aggressive foreign policy of the Indian Government. That policy manifestly aims at conquest and territorial aggrandisement; but its supporters allege that it is based on the apprehension that Russia is intent on invading India through Afghanistan, and that the best way to guard against the danger is to maintain British garrisons in Afghanistan, ready to meet our foe in that difficult region, although far from our reserves and in the

midst of a fanatical population intensely hostile to our presence in their territory. This policy was tried in 1838-42, when it proved appallingly disastrous, and was thereupon completely abandoned; but in 1875 it was revived under the name of the "forward" or the "scientific frontier" policy, in the expectation that our improved weapons and our many scientific contrivances would enable us to compass the subjugation of Afghanistan, an enterprise in which we had so grievously failed some thirty years before. The war of 1878-80, undertaken in that expectation, proved however equally disastrous and humiliating. Meanwhile the revival of the policy in question had been strongly condemned by every military authority, including Lord Napier of Magdala, who had held for sixteen years appointments in India involving direct responsibility for the security of the Indian frontier, and Lord Roberts, who, with the experience acquired in the last Afghan war, stated in his despatch dated May 29th, 1880: "The longer and more difficult the line of communication is, the more numerous and greater the obstacles which Russia would have to overcome; and far from shortening one mile of the road, I would let the web of difficulties extend to the very mouth of the Khyber."

Thus, both actual result and military authority have long exposed the utter unsoundness of the above-mentioned policy; and that the Government should still adhere to it seems unaccountable, unless it be due to the fact that, while the abandonment of a policy that has proved so disastrous would imply the avowal of a very grave error, its prosecution entails no obligation to justify it in Parliament, so long as the necessary war supplies can be drawn from the Indian treasury.

The latest trans-frontier operations of the Indian Government are the war in Waziristan and the invasion of Chitral. The former undertaken in October appears to have come

to an end, as no active operations seem to be carried on there at present, although the object of the war—the subjugation of the country—remains unaccomplished. The Chitral expedition, organised in March for the vindication of an alleged right of Suzerainty, is now in active operation, and its issue is in the womb of futurity. The one thing certain in the matter is that a war in which twenty thousand British troops are engaged, must involve very considerable expenditure, which cannot fail seriously to aggravate the existing difficulties of the Indian Exchequer.

In order to apprehend, however, the Constitutional bearing of the action of the Indian Government in thus carrying on trans-frontier wars, it should be remembered that when Parliament intrusted the control of the Indian administration to a Principal Secretary of State, it enacted provisions for maintaining the supremacy of the law throughout our Indian possessions, for ensuring the free discussion of all legislative projects in the Council of the Viceroy, and for restricting the application of the Indian revenue exclusively to the wants of the country. One of the latter provisions is embodied in Section LV. of the 21st and 22nd Vict., c. 106, which runs as follows:—
“ Except for preventing or repelling actual invasion of Her
“ Majesty’s Indian possessions, or under sudden and urgent
“ necessity, the revenues of India shall not, without the
“ consent of both Houses of Parliament, be applicable to
“ defray the expenses of any military operation carried on
“ beyond the external frontiers of such possessions by Her
“ Majesty’s forces charged upon such revenues.”

Now it is evident that the intention of Parliament, recorded in such unmistakeable language, has been deliberately frustrated by the Indian Government using Indian revenue in trans-frontier wars, while no sudden or actual danger menaced the Indian frontier. The object of those wars has simply been to extend the Indian frontier into the

territories of our neighbours—in other words, conquest and territorial aggrandisement.

If the Indian Secretary of State is to continue spending the revenues of India in carrying on transfrontier wars, in disregard of the Statutes which define his legitimate power and his obligations, can any doubt be entertained as to the financial result of such a course? The resources of India, severely strained during a long period of warfare, are already unequal to the wants of her Government, and loans have to be raised annually for covering the deficiency and discharging the interest on the public debt. A similar condition of things has, in every State where it obtained, been the forerunner of bankruptcy; and is there any ground for expecting a different result from it in India?

On the other hand, the wars which have caused this financial breakdown have entirely failed to accomplish their object—namely, the submission of our tribal neighbours. This disappointing issue is certainly not due to any short coming on the part of our troops, for their valour and endurance have justly called forth the admiration of their countrymen. The failure must be ascribed to the action of those who initiated, and persisted in, those wars, in ignorance of the character of the Afghans and of the peculiar features of their land. The history of Napoleon's disastrous Spanish campaigns furnishes, in some respects, a parallel instance—namely, in the fanaticism of the inhabitants, the unfavourable nature of the ground, the difficulty of transport and supply, and the irrational persistence in the enterprise after it had shown itself to be practically impossible.

An officer, who served in the Afghan Campaign of 1879, described the impediments which a British Army encounters in that country in the following clear and convincing terms:—"The enormous difficulty of carrying out a successful campaign in Afghanistan is due to two causes;

and as these would operate as effectually to check the advance of an invader from Central Asia, it will be worth while to state them in detail. The first cause is the absence of any combined resistance. Attacking the Afghan tribes is like making sword-thrusts into the water. You meet with no resistance, but you also do no injury. The tribes harass the communications of an invading army; they cut off straggling parties; they plunder baggage; they give the troops no rest; but they carefully avoid a decisive action. The invading force moves wherever it pleases; but it never holds more of the country than the ground on which it is actually encamped. Each separate tribe is, as it were, an independent centre of life, which requires a separate and special operation for its extinction. The consequence is that the only way in which we could hope to enforce our authority throughout Afghanistan would be by a simultaneous occupation of the entire country; and seeing that the country is as large as France, very sparsely populated, and quite incapable of feeding a large army, such an occupation is simply impossible. The other great difficulty is that there is hardly any forage in Afghanistan, and consequently the transport train of an invading army cannot fail to be crippled after a few weeks of active service. The moment that such a catastrophe is consummated, an army in the field becomes as cumbersome and useless as a swan on a turnpike road. This latter difficulty it was which compelled the Government to make the treaty of Gandamak."

Since the above statement was published in 1881, neither the configuration of the land in Afghanistan nor the character of its inhabitants has changed, and there seems no reasonable ground, therefore, for expecting that the present war in Waziristan, if it be continued, or the Chitral expedition, or any further operations which may be undertaken for executing the "forward frontier" policy, will result

in issues more successful than those of the expeditions already employed for the promotion of that policy. It is urgent, therefore, if British prestige is to be maintained in the East, and the finances of India are to be retrieved, that the illegal exercise of power which has involved the nation in such inglorious and unprofitable wars, should be stopped as speedily as possible. The situation certainly is full of dangers, and the remedy which naturally suggests itself is the trial and, if necessary, the punishment of those whose errors and shortcomings have caused the mischief. But impeachment has become obsolete, and the House of Commons, whose supineness has condoned and encouraged illegal and arbitrary power in the administration of India, will doubtless decline to issue the necessary indictment, except under the pressure of strong public opinion calling for the needed reform. Such opinion has not been manifested as yet. In this critical situation we can only hope that British statesmen possessed of patriotism and ability to cope successfully with the conjuncture, will come forward before things have drifted much further in their present perilous course, and a serious catastrophe becomes inevitable.

J. DACOSTA.

V.—MEMOIR OF THE LATE LORD SELBORNE.

THE Earl of Selborne, better known as Sir Roundell Palmer, died at Blackmoor, Petersfield, on the 4th of May. He was born on the 27th November, 1812, in the Rectory of Mixbury in Oxfordshire, being the second son of the Rev. William Jocelyn Palmer. He was educated at Winchester, passing thence to Oxford, where he achieved a brilliant University career, taking the Ireland Scholarship in 1832 and the Eldon Scholarship in 1834, as well as the 1st Class in Classics. In November, 1834, he entered the chambers of Mr. Booth, a well-known conveyancer and parliamentary draftsman, and in 1837 he was called to the Bar at Lincoln's Inn. He quickly came to the front, and by the year 1855 his practice had become enormous. He was first returned to Parliament for Plymouth in 1847, became a Queen's Counsel in 1849, was Solicitor-General in 1861, Attorney-General in October, 1863. On the 15th October, 1872, he succeeded Lord Hatherley as Lord Chancellor, retiring from that office in 1874, but again resuming that high position on April 28th, 1880, in the place of Lord Cairns. He resigned in 1885. The New Law Courts were opened during his tenure of office, and he was raised to an Earldom in connection with this event. He is responsible for the change effected in the history of English Law and Procedure by the operation of the Judicature Acts, a well-designed measure intended to do away with the great waste of judicial power, and to put an end to the irrational and mischievous dualism which had for centuries pervaded the administration of English Law. The Lord Chancellor (Lord Herschell), speaking of his death in the House of Lords on May 7th, said: "My Lords, I feel sure that I shall be acting in accordance with the feeling of your

Lordships in giving expression to the sense which this House entertains of the loss it has sustained owing to the death of Lord Selborne. (Hear, hear.) Just ten years ago, when an illustrious predecessor of his on the Woolsack died—the late Lord Cairns—Lord Selborne, who was detained from being present by a severe domestic affliction, nevertheless gave expression to his wish to offer his testimony to the remarkable powers and great worth of his illustrious predecessor, and to the loss this House and the country had sustained. I am sure we all feel that we have lost another illustrious lawyer, who may worthily be ranked with the one to whom I have just alluded. Lord Selborne was a master of equity jurisprudence, but although having the completest mastery of the technicalities of the law, he was no mere technical lawyer. He had a remarkable grasp of legal principles, and capacity for applying them with the utmost intelligence and perspicacity to the work in hand. His industry was indefatigable; he spared himself no pains; he ever gave of his best; he used his utmost endeavours to arrive at a right conclusion, and his judgments were as remarkable for their thoroughness and solidity as for the clearness with which they were expressed. But it is not only as a distinguished advocate and Judge that he will be remembered. He took a foremost part in the changes that were made now some twenty years ago, which led to the system of judicature and of administration of the law that now prevails in our Courts. He was one of the most active in bringing about what he conceived to be of great public value—the concentration in one building of the various Courts of Justice. My Lords, I have spoken of what he was as a lawyer and a Judge. I need not remind your Lordships that he was much more than that. The power and ability with which he took part in the discussion of other questions in your Lordships' House must be fresh in your memory. The echoes of the speeches

which he made not long since still linger in these walls, and even those against whom his arguments were directed, could not fail to appreciate their force and power, and also to recognise the fact that these splendid abilities were neither dimmed nor diminished by growing age or increasing infirmities. My Lords, I do not think any of us can forget the impression he made of earnestness and sincerity whenever he addressed your Lordships' House. This is not the time, nor is it the place, to dwell upon what he was as a man, but a few words I am sure your Lordships will pardon. In spite of the absorbing and engrossing nature of his duties and labours in connection with the law, he never allowed himself to be entirely occupied by them; but his energies were distinctly distributed in many directions of fruitful activity with a view to the benefit of his fellow men. He attained the highest rewards of the career which he had chosen, but I believe few men less made them their ambition or their aim. I have met few, perhaps none, who were more completely unworldly in spirit than he was. On his lofty sense of duty I am sure it is unnecessary to dwell; all must have recognised it. Where his duty, as he saw it, led him he followed, without flinching or reserve, and without the slightest regard to consequences. My Lords, behind a somewhat reserved manner, there lay, as all who, like me, had the honour and pleasure of his friendship, knew, a kindly heart and warm affection, and, if there were some who thought at times that his judgment of those who differed from him on political questions was unduly severe, I am sure they were all ready to recognise that this resulted solely from the strength—I may almost say passionate strength—of his convictions, and was in no way prompted by personal ill-will or malice, or desire to give offence. I am quite sure that in this House we all, without respect to Party, feel that the House is poorer for his loss, that the blank he has left will not easily be filled,

and will long be felt ; and those of us who have to take part in the discharge of the judicial duties of this House, sitting as the ultimate Court of Appeal, will long have reason to mourn the loss of a valuable colleague."

Lord Halsbury, The Duke of Devonshire, The Marquis of Salisbury, and The Earl of Rosebery also referred to the loss sustained by the death of Lord Selborne.

The funeral took place on May 8th, in the Hampshire churchyard of Blackmoor, where the body of the late Lady Selborne was already buried, was attended by an enormous concourse of people, rich and poor alike assembling to testify their regard for the late Earl. The body was met at the entrance to the church by the Archbishop of Canterbury, the Bishop of Winchester, and the Rev. R. A. C. Bevan, who, with the choir, preceded it up the aisle into the chancel, singing Lord Selborne's own hymn, " Lord, when my soul her secrets doth reveal." Following as mourners were Lord and Lady Wolmer, the Bishop of Southwell and Lady Laura Ridding, Earl and Countess Waldegrave, Mr. Tournay and Lady Sarah Biddulph, Lady Sophia Palmer, Archdeacon Palmer, and the Marquess of Salisbury. The Rev. Dr. Fearon (head master) and the three Senior Prefects represented Winchester College, and Mr. Marshall, of Queen's College, the University of Oxford. General Sir Michael Biddulph attended on behalf of the Queen, the Bishop of St. Asaph on behalf of the Church in Wales, and Mr. G. A. Spottiswoode (vice-chairman) for the House of Laymen. Among others present were Viscount Cranborne, Lord Edward Cecil, Lord Robert Cecil, the President of Magdalen College, Oxford, Mr. Justice Wright, Mr. Justice North, Lord Stanmore, Sir Stafford Northcote, Lord Northbrook, Mr. J. G. Talbot, M.P., and Mr. H. T. Anstruther, M.P. "O, rest in the Lord" was played as a voluntary, and as everyone stood around the grave the "Te Deum" was sung.

VI.—THE ENGLISH AND AMERICAN BAR ASSOCIATIONS.

IT will be remembered that at a General Meeting of the Bar, held on the 14th of July, 1894, the Report of a Committee of Barristers, appointed on the 7th April, 1894, at the instance of Sir Henry James, to consider whether the constitution, organisation, or action of the Bar Committee could be improved, and, if so, in what respect, was adopted unanimously.

The Report was as follows :—

“Your committee are of opinion that it is desirable in the interest of the profession, and especially of its younger members, that a consultative body should exist, representative of the Bar, which should have for its duty the consideration of all matters affecting the profession, including the maintenance of the rights and privileges of the Bar, the enforcement of professional discipline and custom, the examination of proposed legislation and of the rules of practice from time to time in force, and should upon all such subjects be able to communicate with other persons or bodies in the name and with the authority of the whole profession.

“These functions have for the past ten years been in some measure performed by the Bar Committee, and your committee desire to record their sense of the diligent and valuable service rendered to the Bar by that committee and by its able and devoted honorary secretary, Mr. Lofthouse. But your committee are of opinion that the Bar Committee, supported as it has been by the voluntary subscriptions of but a small number of the members of the Bar, has lacked the authority needed for the full usefulness of its work, and has necessarily been unable effectually to claim to represent the opinion and wishes of the whole profession.

“Your committee consider that it is essential that this representative body should have the means of establishing permanent offices, and employing the necessary paid staff, and that the moneys required for these purposes should not be sought from

casual and voluntary subscriptions, but should be obtained from the funds now administered by the Benchers of the four Inns of Court. And your committee are of opinion that a sum of not less than £1,000 per annum will be required to enable the work to be satisfactorily performed.

“Your committee recommend that, with the view of strengthening the representative body of the Bar and bringing it into direct relation with the governing bodies of the Inns of Court, its constitution should provide for the appointment by each Bench of a certain number of barristers of their Inn, who should be nominated members of what your committee suggest should in future be called the General Council of the Bar.

“Your committee have held seven meetings, and have carefully considered all suggestions laid before them, and now present a proposed set of regulations for the General Council of the Bar, which have been drafted by Mr. Wolstenholme in accordance with resolutions passed by your committee—resolutions which your committee are glad to be able to report were in all cases adopted without a division.

“Your committee are unanimously of opinion that if a council should be constituted according to these regulations, and provided with the needful funds, as above suggested, it will be able to exercise valuable and much-needed influence in gathering and representing the opinion of the profession, and in upholding the discipline and safeguarding the interests of the Bar.

“It has been strongly urged upon your committee by some of its members that the full value of any central organisation of the Bar will not be realised unless provision be made by means of some building adequate for the purpose, for the establishment of a centre for the corporate life of the Bar in its social as well as its professional aspects. Your committee do not consider that this comes so clearly within the terms of the resolutions by which they were appointed as to entitle or call upon them to make any specific recommendation on the subject, but they desire to express their sympathy with the proposal, and their opinion that the creation of some such organisation would be of much value to the profession in bringing together the different ranks and sections of its members.

“Signed on behalf of the committee,

“EDWARD CLARKE, Chairman.

“June 25th, 1894.”

THE ENGLISH AND AMERICAN BAR ASSOCIATIONS. 227
PROPOSED REGULATIONS FOR THE GENERAL COUNCIL OF
THE BAR.

CONSTITUTION.

1. "The General Council of the Bar" as constituted by these regulations is hereinafter referred to as "the Council."

2. The Council shall be the accredited representative of the Bar, and its duty shall be to deal with all matters affecting the profession and to take such action thereon as may be deemed expedient.

3. The Council shall consist of—

- (i.) The Attorney-General and Solicitor-General for the time being, and every former Attorney-General or Solicitor-General, whilst remaining in actual practice at the Bar (hereinafter referred to as the official members).
- (ii.) Sixteen practising barristers, of whom four are to be nominated by the masters of the Bench of each of the four Inns of Court (hereinafter referred to as the nominated members).
- (iii.) Forty-eight practising barristers to be elected by the whole Bar (hereinafter referred to as the elected members).

4. The Council shall have power to appoint as additional members such barristers in actual practice, not exceeding six in number, as the Council may consider it desirable to appoint by reason of their Parliamentary or professional position, or by reason of their representing any circuit or section of the Bar not adequately represented. The members so appointed shall go out of office at the time appointed for the close of the election next following their appointment.

5. The Council shall be deemed duly constituted, notwithstanding any vacancy in the number of nominated or elected members.

6. Of the elected members not less than twelve shall be of the Inner Bar, and not less than twenty-four of the Outer Bar, at the time appointed for the close of the election, and such proportion shall be maintained in filling up vacancies.

7. Of the elected members, six at least shall be of less than ten years' standing at the Bar at the time of their election, and this proportion shall be maintained in filling up vacancies.

8. One half of the elected members shall go out of office at the time appointed for the close of the election in 1896, and in each subsequent year. The Council shall decide who are to be the elected members to go out of office in 1896. In each subsequent year the elected members to go out of office shall be those who have been longest in office since their last election. Elected members going out of office shall be eligible for re-election. .

ELECTIONS.

9. The time of the annual election shall be fixed by the Council, and shall be held as soon as possible after the annual general meeting of the Bar.

10. Every candidate for election shall be proposed in writing, signed by at least ten barristers, and sent to the secretary within one week after the annual general meeting of the Bar shall have been held under these regulations.

11. After the expiration of one week from the day when the annual general meeting of the Bar shall have been held, the Council shall meet, and it shall be its duty to nominate for election additional candidates from any section of the Bar not in the opinion of the Council adequately represented on the Council, and by the candidates proposed.

12. A resolution of the Council shall be a sufficient nomination of such additional candidates.

13. If more candidates be proposed than there are vacancies on the Council, the election shall be by voting-papers to be personally filled up and signed by the electors.

14. Every barrister shall be entitled to vote, and voting-papers shall be sent to every barrister whose professional address within the United Kingdom is given in the "Law List."

15. Every voter shall have one vote for each complete number of two to be elected, and the votes may be divided in any manner between two or more candidates, but so that not more than four votes shall be given for any one candidate.

16. Voting-papers not filled up in accordance with these regulations shall be void.

17. The Council shall make regulations for the conduct of the election, and in case of an equality of votes shall determine which of the candidates shall be deemed to be elected.

18. If the full number of the Council to be elected be not proposed in manner required, those candidates who are duly

proposed shall be elected, and the Council, as elected, shall have power to fill up vacancies.

19. Casual vacancies which may occur among the elected members may be filled up by the Council, and the person filling a vacancy shall go out of office as if he had been elected instead of, and at the same time as, the person whose place he fills.

POWERS OF THE COUNCIL.

20. The Council shall carry into effect the purposes for which it is constituted as before mentioned in such manner as it may determine. The Council shall appoint a chairman and vice-chairman, and may appoint an executive committee and such standing committees and sub-committees as it may think fit, and may from time to time delegate to any such committee or sub-committee any of the powers or duties of the Council as to the Council may seem desirable.

21. The Council shall have power to appoint a secretary, treasurer, and such assistants, officers, and servants as may be necessary, with or without salaries.

22. The funds received by the Council shall be at its disposal for the payment of such salaries and other expenses as the Council may incur in promoting the objects for which it is constituted.

23. The quorum of the Council shall be eight.

24. The Council shall have power to make bye-laws regulating the elections and the proceedings at their meetings, and generally for the purpose of carrying these regulations into effect, and from time to time to alter such bye-laws.

25. The decision of the Council as to the mode in which effect is to be given to these regulations, or on any question of construction or fact arising under these regulations, to be conclusive.

ANNUAL GENERAL MEETING OF THE BAR.

26. The annual general meeting of the Bar shall be held (subject to the permission of the masters of the Bench) in the Old Dining Hall of Lincoln's Inn, at a quarter-past four o'clock p.m., on the second Tuesday in the Easter sittings; but the Council shall have power, with the concurrence of the Attorney-General, to alter the date, time, and place of the annual general meeting.

27. The Council shall submit its accounts to the annual general meeting, with a statement of the proceedings of the past year, and a record of the attendances of the elected members of the Council at its meetings.

28. Notice of any resolution to be proposed at the annual general meeting shall be given in writing to the secretary of the Council not less than seven clear days before the day of meeting.

TEMPORARY.

29. The first election shall be held in 1895.

30. The present elected members of the Bar Committee for the current year shall be the elected members of the Council, and, together with the official members and the nominated members, shall constitute the Council until the election, shall be held in 1895, but all the elected members shall retire from office at the time appointed for the close of that election.

After the adoption of the above report and regulations, it was moved by Mr. Marten, Q.C., and seconded by Mr. Crump, Q.C., "That the Attorney-General (Sir John Rigby, Q.C., M.P.), be requested to send a copy of the report and regulations to the Masters of the Bench of each of the four Inns of Court, and to apply to the Masters of the Bench of each Inn to nominate four practising Barristers to serve on the General Council of the Bar, and to submit to the Masters of the Bench the suggestion of the committee, confirmed by this meeting, that they should provide the necessary funds for carrying on the work of the Council." This motion was unanimously agreed to.

The forthcoming election of the General Council of the Bar will be a matter of considerable interest to the profession; and it is particularly incumbent on members of the Junior Bar to consider well the claims of members of the Inner Bar, whose interests it may be observed are not always identical with those of the Junior Bar. At the present time it may not be without advantage to the profession to know something of the manner in which the Bar Association is carried on in the United States, and we

therefore publish the Constitution and the By-Laws of the American Bar Association. They are as follows:—

CONSTITUTION.

NAME AND OBJECT.

Article I.—This Association shall be known as “THE AMERICAN BAR ASSOCIATION.” Its object shall be to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union, uphold the honour of the profession of the law, and encourage cordial intercourse among the members of the American Bar.

QUALIFICATIONS FOR MEMBERSHIP.

Article II.—Any person shall be eligible to membership in this Association who shall be, and shall, for five years next preceding, have been a member in good standing of the Bar of any State, and who shall also be nominated as hereinafter provided.

OFFICERS AND COMMITTEES.

Article III.—The following officers shall be elected at each Annual Meeting for the year ensuing:—A President (the same person shall not be elected President two years in succession); one Vice-President from each State; a Secretary; a Treasurer; a Council, consisting of one member from each State (the Council shall be a standing committee on nominations for office); an Executive Committee, which shall consist of the President, the last ex-President, the Secretary, and the Treasurer, all of whom shall be *ex-officio* members, together with three other members, to be chosen by the Association; and the President, and in his absence the ex-President, shall be the Chairman of the Committee.

The following committees shall be annually appointed by the President for the year ensuing, and shall consist of five members each:—

- On Jurisprudence and Law Reform;
- On Judicial Administration and Remedial Procedure;
- On Legal Education and Admissions to the Bar;
- On Commercial Law;
- On International Law;
- On Publications;
- On Grievances.

A majority of those members of any committee, including the Council, who may be present at any meeting of the Association, shall constitute a quorum of such committee for the purpose of such meeting.

The Vice-President for each State, and not less than two other members from such State, to be annually elected, shall constitute a Local Council for such State, to which shall be referred all applications for membership from such State. The Vice-President shall be, *ex-officio*, Chairman of such Council.

A committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each Annual Meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall, in the interval, have died, with such notices of them as shall, in the discretion of the committee, be proper.

It shall be the duty of the Vice-President from each State and Territory to report the deaths of members within the same to the said committee.

ELECTION OF MEMBERS.

Article IV.—All nominations for membership shall be made by the Local Council of the State to the Bar of which the persons nominated belong. Such nominations must be transmitted in writing to the Chairman of the General Council, and approved by the Council, on vote by ballot.

The General Council may also nominate members from States having no Local Council, and at the Annual Meeting of the Association, in the absence of all members of the Local Council of any State; *Provided*, That no nomination shall be considered by the General Council, unless accompanied by a statement in writing by at least three members of the Association from the same State with the person nominated, or, in their absence, by members from a neighbouring State or States, to the effect that the person nominated has the qualifications required by the Constitution and desires to become a member of the Association, and recommending his admission as a member.

All nominations thus made or approved shall be reported by the Council to the Association, and all whose names are reported shall thereupon become members of the Association; *Provided*, That if any member demand a vote upon any name

thus reported, the Association shall thereupon vote thereon by ballot.

Several nominees, if from the same State, may be voted for upon the same ballot; and in such case placing the word "No" against any name or names upon the ticket shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat an election.

During the period between the Annual Meetings, members may be elected by the Executive Committee upon the written nomination of a majority of the Vice-President and members of the Local Council of any State.

Article V.—All members of the Conference adopting the Constitution, and all persons elected by them upon the recommendation of the committee of five appointed by such Conference, shall become members of the Association upon payment of the annual dues for the current year herein provided for.

BY-LAWS.

Article VI.—By-Laws may be adopted at any Annual Meeting of the Association by a majority of the members present. It shall be the duty of the Executive Committee, without delay, to adopt suitable By-Laws, which shall be in force until rescinded by the Association.

DUES.

Article VII.—Each member shall pay five dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privilege of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge.

ANNUAL ADDRESS.

Article VIII.—The President shall open each Annual Meeting of the Association with an address, in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several States and by Congress during the preceding year. It shall be the duty of the member of the General Council from each State to report to the President, on or before the first day of May, annually, any such legislation in his State.

ANNUAL MEETINGS.

Article IX.—This Association shall meet annually, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum.

AMENDMENTS.

Article X.—This Constitution may be altered or amended by a vote of three-fourths of the members present at any Annual Meeting, but no such change shall be made at any meeting at which less than thirty members are present.

CONSTRUCTION.

Article XI.—The word "*State*," whenever used in this Constitution, shall be deemed to be equivalent to *State, Territory*, and the *District of Columbia*.

BY-LAWS

MEETING OF THE ASSOCIATION.

I.—The Executive Committee, at its first meeting after each Annual Meeting, shall select some person to make an address at the next Annual Meeting, and not exceeding six members of the Association to read papers.

II.—The order of exercises at the Annual Meeting shall be as follows :—

- (a) Opening Address of the President.
- (b) Nominations and Election of Members.
- (c) Election of the General Council.
- (d) Reports of Secretary and Treasurer.
- (e) Report of Executive Committee.
- (f) Reports of Standing Committees.
 - On Jurisprudence and Law Reform ;
 - On Judicial Administration and Remedial Procedure ;
 - On Legal Education and Admissions to the Bar ;
 - On Commercial Law ;
 - On International Law ;
 - On Publications ;
 - On Grievances.
- (g) Reports of Special Committees.
- (h) The Nomination of Officers.
- (i) Miscellaneous Business.
- (j) The Election of Officers.

The address, to be delivered by a person invited by the Executive Committee, shall be made at the morning session of the second day of the Annual Meeting.

The reading and delivering of essays and papers shall be on the same day, or at such other time as the Executive Committee may determine.

III.—No person shall speak more than ten minutes at a time or more than twice on one subject.

A stenographer shall be employed at each Annual Meeting.

IV.—Each State Bar Association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association. In States where no State Bar Association exists, any City or Country Bar Association may appoint such delegates not exceeding two in number. Such delegates shall be entitled to all the privileges of membership at and during the said meeting.

V.—At any of the meetings of the Association, members of the Bar of any foreign country or of any State who are not members of the Association may be admitted to the privileges of the floor during such meeting.

VI.—All papers read before the Association shall be lodged with the Secretary. The Annual Address of the President, the reports of committees, and all proceedings at the Annual Meeting shall be printed; but no other address made or paper read or presented shall be printed, except by order of the Committee on Publications.

Extra copies of reports, addresses, and papers read before the Association may be printed by the Committee on Publications for the use of their authors, not exceeding two hundred copies for each of such authors.

The Secretary and the Chairman of the Executive Committee shall endeavour to arrange with the Smithsonian Institution, or otherwise, a system of exchanges by which the *Transactions* can be annually exchanged with those of other associations in foreign countries interested in jurisprudence or governmental affairs; and the Secretary shall exchange the *Transactions* with those of the State and Local Bar Associations; and all books thus acquired shall be bound and deposited in the charge of the New York City Bar Association, subject to the call of this Association, if it ever desires to withdraw or consult them, if the former Association agrees to such deposit.

The Secretary shall send one copy of the Report of the proceedings of this Association to the President of the United States, and to each of the Judges of the Supreme Court thereof, and to the Library of the State Department, and of the Department of Justice thereof, and to the Library of Congress, and the Library of the Supreme Court thereof, and to the Governor, and to the Chief Judge of the Court of last resort of each State, and to the State Librarian thereof, and to all public law libraries, and other principal public and college libraries in the United States, and to such other persons or bodies as the Executive Committee may direct.

No resolution complimentary to an officer or member for any service performed, paper read, or address delivered shall be considered by the Association.

OFFICERS AND COMMITTEES.

VII.—The terms of office of all officers elected at any Annual Meeting shall commence at the adjournment of such meeting, except the Council, whose term of office shall commence immediately upon their election.

VIII.—The President shall appoint all committees, except the Committee on Publications, within thirty days after the Annual Meeting, and shall announce them to the Secretary, and the Secretary shall promptly give notice to the persons appointed. The Committee on Publications shall be appointed on the first day of each meeting.

IX.—The Treasurer's Report shall be examined and audited annually, before its presentation to the Association, by two members to be appointed by the Chairman of the Executive Committee.

X.—The Council and all standing committees shall meet on the day preceding each Annual Meeting, at the place where the same is to be held, at such hour as their respective Chairmen shall appoint. If at any Annual Meeting of the Association any member of any committee shall be absent, the vacancy may be filled by the members of the committee present.

The Secretary of the Association shall be the Secretary of the Council.

XI.—The Committee on Publications shall also meet within one month after each Annual Meeting, at such time and place as the Chairman shall appoint.

XII.—Special meetings of any committee shall be held at such times and places as the Chairman thereof may appoint. Reasonable notice shall be given by him to each member by mail.

The travelling and other necessary expenses incurred by any committee, standing or special, for meetings of such committee, during the interval between the Annual Meetings of the Association, shall be paid by the Treasurer, on the approval and by the order of the Executive Committee, out of such appropriation, as to the Executive Committee may seem necessary in each case, on previous application in advance of its expenditure.

All committees may have their reports printed by the Secretary before the Annual Meeting of the Association; and any such report, containing any recommendation for action on the part of the Association, shall be printed and shall be distributed by mail by the Secretary to all the members of the Association at least fifteen days before the Annual Meeting at which such report is proposed to be submitted.*

It shall be the duty of each Vice-President and member of the General Council of this Association to endeavour to procure the enactment by the legislature of their State of each and every law recommended by the Association, and the Secretary shall furnish them with copies of each and every recommendation and draft of bill, when there shall be such draft; and whenever this Association shall by resolution recommend the enactment of any law or laws, the Secretary shall, as soon as possible, furnish a copy of the resolution to the President of each State Bar Association, with the request of this Association that such State Bar Association shall co-operate with the local Vice-President and member of the General Council of this Association in having a bill introduced in the legislature of its State containing the subject-matter recommended by such resolution, and use proper means to procure the enactment of the same into law. In every State where there is no State Bar Association, a copy of such resolution with a similar request, shall be sent to the President of the Bar Association of the principal city in such State; and in every instance where the

* The following resolution was adopted on August 30th, 1889 :

"*Resolved*, That any standing or special committee hereafter reporting necessary legislation, shall prepare a bill embodying their views, for the approval of the Association."

form of bill has been recommended with the resolution, a copy of such form of bill shall also be sent with the resolution.

ANNUAL DUES.

XIII.—The Annual Dues shall be payable at the Annual Meeting in advance. If any member neglects to pay them for any year at or before the next Annual Meeting, he shall cease to be a member. The Treasurer shall give notice of this By-Law, within sixty days after each meeting, to all members in default.

A member who has been dropped from the roll for non-payment of dues may be restored to membership by the Executive Committee upon the payment of all back dues. *Provided*, such restoration shall be recommended by a member of the Local Council of his State, or in their absence, at an Annual Meeting, by any two members of the Association.

XIV.—(1.) A Section of the Association, to be known as the Section of Legal Education, is hereby established, which shall meet annually in connection with the Meeting of the Association, but not during such hours as the Association is in session.

(2.) Its object shall be the discussion of methods of Legal Education, and it may make recommendations to the Association, which shall be referred by the Association to the Committee on Legal Education.

(3.) The proceedings of the Section may be published from time to time, at the discretion of the Executive Committee, and on the recommendation of the Committee on Publications.

(4.) All members of the Association, who desire, may enrol themselves as members of the Section, and persons not eligible for membership in the Association, but who are engaged in teaching law, may be admitted to the privilege of the floor at any meeting of the Section, by vote of the Section.

(5.) The Section shall be organised by the appointment of a Chairman and Secretary, at its first session; and a Chairman and Secretary shall thereafter be elected annually by the Section.

(6.) A Section of the Association, to be known as the Section of Patent Law, is hereby established, which shall meet annually in connection with the meeting of the Association, but not during such hours as the Association is in session.

(7.) Its object shall be to discuss the subject of the law and practice relating to patents. It may report to the Association and matters relating to patents may be referred to it.

(8.) The proceedings of the Section may be published from time to time, at the discretion of the Executive Committee, and on the recommendation of the Committee on Publications.

(9.) All members of the Association who desire, may enrol themselves as members of the Section.

(10.) The Section shall be organised by the appointment of a Chairman and Secretary by the Section, and a Chairman and Secretary shall be thereafter annually elected by the Section for the year commencing upon the final adjournment of its meeting.

VII.—CURRENT NOTES ON INTERNATIONAL LAW.

Public International Law.

Intervention.

There have been, during the past few months, several very striking illustrations of the much abused principle of Intervention. All of them merit the attention of the International Lawyer as well as of the practical politician. In China, in Armenia, in Madagascar and in Nicaragua there have been instances of that species of foreign interference, of which "Historicus" has said: "Its essence is illegality and its justification is its success."

Perhaps the most serious and significant case is the famous protest against the territorial provisions of the Chino-Japanese Treaty of Simonoseki signed on the 16th of April. This convention appears to have stipulated for:—1. The Independence of Korea. 2. The permanent retention by Japan of the conquered territory in Manchuria, East of the Liao River. 3. The Cession of Formosa. 4. An indemnity and, according to some reports, probably without foundation, an offensive and defensive alliance between the contracting Powers.*

* *Times*, 16th April, 1895.

On the 23rd of April, after much irresponsible and hysterical declamation on the part of the Continental Press, the Governments of Russia, France and Germany lodged a formal protest against the proposed annexation by Japan of the Liao-Tung Peninsula.*

The interesting problem as to how far moral suasion would be supplemented by practical coercion was fortunately solved early in May by the Japanese Government returning a favourable answer to the protest. "Deferring to the friendly counsels of France, Russia, and Germany, Japan renounces the definitive possession of the Feng Tien (Liao-Tung) Peninsula, including Port Arthur."† It would appear that the consideration for this surrender by Japan will be an increase of the indemnity. Ratifications of the Treaty as originally framed, were however exchanged about the 10th of May, so that the modifications suggested by the three European Powers must be the subject of future negotiations between the Treaty States. No more typical case of "Intervention" has occurred in recent years, the most noteworthy feature about it being the fact that it was not an act of the European Concert, but of a strangely assorted selection of Continental Powers. It seems clear that Japan has not undertaken to evacuate the conquered territory until the Indemnity has been paid, so that it is more than probable that there is yet a second act to be played in this interesting drama.

As regards the Intervention of the Powers in Armenia, there was undoubtedly a very solid basis for it, whatever may be its results. Unless a statute of limitations is to be recognised as nullifying International Treaties after the lapse of a few years from their execution, there was certainly ground for the European joint Note to the Porte on the subject of the alleged Armenian

* *Times*, 25th April.

† *Times*, 7th May.

barbarites. The Commission appears to have investigated the matters thoroughly in the light of Articles 61 and 62 of the Treaty of Berlin, as well as of the general interests of civilisation. Information is at present meagre, and we must await the final Report of the Commission, but there is no doubt that a joint scheme of Reforms has been drawn up by the intervening Governments and presented to the Sultan for serious consideration.* That a recrudescence of the eternal Eastern Question in its acute phase may be thus avoided is a consummation devoutly to be wished.

The French war (or is it, as in the case of China in 1884, merely an *état de représailles*?) in Madagascar involves too far reaching questions to be discussed here at length. We await with great interest the publication of the diplomatic correspondence between our own and the French Government as to the non-recognition of the Hovas as belligerents.

The recent Nicaraguan episode is an instance not so much of ordinary Intervention as of Reprisals or Retorsion. The facts are very clear. In the course of last summer the Nicaraguan Government unlawfully and unwarrantably seized the British Vice-Consul at Bluefields and about twenty other British subjects, and after detaining or imprisoning them, expelled them from the country.

Nemesis rapidly overtook the Republic in the shape of a demand by the British Government for the payment of an indemnity of £15,500. After repeated delays by Nicaragua, in the vain hope that the United States would invoke the Monroe Doctrine in its favour, Admiral Stephenson, with several vessels of the Pacific Squadron, appeared at the port of Corinto and delivered an ultimatum in these terms: "I have received orders from Her Majesty's Government

* See *Times*, 13th and 14th May.

"to occupy Corinto and to seize all vessels flying the Nicaraguan Flag, and to hold the same until such time as the Nicaraguan Government has complied with the demands of the British Government. . . . I have constituted Captain Trent, of the *Royal Arthur*, governor of the port." *

On the 27th April, Corinto was accordingly occupied by a force of blue-jackets, and the British Flag was hoisted over the Custom House.†

The Republican Government protested against this step as "highly offensive to its dignity and independence, and persisted in proposing Arbitration, or any other means recognised by the Law of Nations, for the settlement of questions in dispute."

Finally, however, being convinced that there would be no active protest on its behalf by the United States Government, it agreed to pay the indemnity demanded in London within a fortnight, and the undertaking was guaranteed by the neighbouring Republic of Salvador. The British Fleet thereupon left Corinto on the 5th May, after gravely saluting the Nicaraguan Flag.‡

There are many precedents in the history of International Law for the general principle involved in this case of Reprisals. Coercive Intervention has long been looked upon as justifiable in cases where one State has been guilty of what Mr. Secretary of State Webster once aptly called "Summary, sanguine, or undue punishment of citizens" of another State (see Wharton's *Digest*, I., § 546), or of any arbitrary or capricious interference with such citizens. The present case was aggravated by the fact of one of the molested British subjects being a diplomatic representative.

The well-known Don Pacifico Case, in 1849, was somewhat analogous to the present one, but the coercive

* *Times*, 26th April, 1895.

† *Times*, 29th April.

‡ *Times*, 7th May.

measures then took the shape of an Embargo. Many of the cases of Pacific Blockade were also very similar, but none of them involved the landing of an armed force or the actual assumption of organised control over territory of the offending State, as in the recent Corinto affair (see generally *Law Magazine and Review*, Vol. XIV., p. 109: "*Some recent Incidents on International Law*," and all the standard text-books under the head of *Pacific Blockade*).

The armed intervention of France in Mexico, in 1861, is perhaps a closer precedent. France, Spain, and Great Britain had on the question of the non-payment of Mexican Bonds notified to Mexico that "it was necessary to resort " to positive measures to demand a more efficacious protection of the persons and goods of the subjects, as well " as for the fulfilment of the obligations contracted by " Mexico to such subjects."

Great Britain and Spain did not however see fit to actively assist France in her armed interposition, and the French Government actuated, as it undoubtedly was, by other motives than those indicated in the declaration, somewhat justified a deprecatory resolution passed by the U.S. House of Representatives on the subject (see Calvo: *Droit Int.*, 3rd edition, Vol. III., 50; and Wharton's *Digest*, § 318; also compare the case cited by Wharton, at § 321).

The most remarkable precedent, however, is one which occurred in 1854, curiously enough also in connection with Nicaragua. The people of San Juan or Greytown, in the Mosquito territory of Nicaragua, had refused to apologise and give satisfaction to the United States for "gross " indignities to a United States diplomatic representative," and damage done to the property of United States citizens. Thereupon the commander of the United States man-of-war *Cyane*, acting under Government orders, gave notice that

unless the necessary reparations were made within a specified time, he would bombard the town.

Eventually this was actually done, and resulted in an "almost total destruction of the buildings, though no lives were lost." The whole affair was justified by the Secretary of State, Mr. Marcy, as "sustainable by International Law" (see Wharton's *Digest*, § 224A, especially p. 596). The coincidence between this and the present case, amply accounts for the policy of *laissez-faire* adopted towards our Government by the United States in the Corinto affair. It should be observed that the British Government has never pretended to claim any territorial rights in the Mosquito Territory, which is "part of the political administration and organisation" of Nicaragua (see *U.S. Correspondence, Times*, 4th January, 1895).

* * *

Arbitration.

Mr. Cremer's memorial in favour of general arbitration in disputes between the United States and Great Britain, signed by 354 members of Parliament, has been presented to the President and Congress of the United States, and has been ordered to be printed in the *Congressional Record* (see *Times*, 7th March, 1895).

* * *

Private International Law.

Domicile.

An interesting instance of the value of testamentary dispositions as evidence of the Intention necessary to effect a change of Domicile, was afforded by the recent case of *In re Garden, deceased*, which appears to be reported only in the *Times L.R.*, Vol. XI., p. 167. The deceased testatrix left England in 1874, and travelled on the Continent with her sister, till the latter's death in Paris in 1883. The testatrix subsequently made her will and two codicils in English

form, as prepared in England by an English solicitor. In her second codicil, which was made at Florence, she described herself as a "British subject at present residing at Florence." Chitty, J., held that her domicile remained English at the time of her death in Florence in 1893, and appears to have made some very instructive remarks on the great weight which should be attached in such cases to the solemn testamentary dispositions of a testator. He laid stress upon the contents of the will and codicils as indicating an intention on the part of the deceased to retain her English domicile and to have the succession to her property regulated by English Law.

Compare on this point the well known case of *Doncet v. Geoghan*, 9 Ch. D. 441; and see also *Wilson v. Wilson*, L.R. 2 P. and M. 436.

* * *

Foreign Immovables.

The curious case of *In re Piercey, Whitwham v. Piercey*, 1895, 1 Ch. 83, was briefly alluded to in our last issue, but merits a more detailed examination. The material facts were these. The testator gave all his real and personal estate to trustees upon trust for sale and conversion, and to hold the proceeds after a life estate to his widow (*inter alia*) for his children for their respective lives with remainder to their respective issue. A large part of the real property was land in Sardinia. The trustees sold part of this. By the Italian Code, the "trust substitutions" in remainder were illegal, and it was contended that the will was so far inoperative. The Court held: (a) that the direction to sell was good, even by Italian Law; (b) when once the sale was effected, the property became movable, and English Law would govern the validity of subsequent trusts of the proceeds of sale; and (c) that until sale of any part of the land, the Italian Law would apply, and the claim of the

person entitled to the income under the will would *seem* have to conform to the requirements of Italian Law. Hence as regards the gift for life to the widow she would validly take as "usufructuary" by Italian Law; but as regards the validity of the trust remainders, after the life interests given to testator's children, this would possibly depend upon whether the sale was carried out before the death of the parents. At any rate, *prima facie* by Italian Law, so long as the property remained land, the remainders were void as "trust substitutions." On this question, however, some of the tenants for life under the will elected to stand by the will in any case; and as regards the only one who raised any question, the Court held that there was no need at present to decide as to any conflict between himself and his children.

The facts are not reported as fully as could be desired. It does not, for instance, clearly appear whether the Testator was a British subject and domiciled in England, though this was presumably the case.

The case is, on the whole, a very remarkable one, and is in some respects a new authority without previous precedent.

* * *

Other Cases.

The case of *N. W. Bank v. Poynter, Son, and Macdonald*, referred to in our last issue, is now reported in L.R. 1895, Ap. Cas. 56. The case of *Canterbury v. Wyburn and Others* is reported fully in L.R. 1895, Ap. Cas. 89.

A decision of some interest on International Copyright is to be found in *The "Morocco Bound" Syndicate v. Harris*, in 1895, 1 Ch. 534.

J. M. GOVER.

VIII.—NOTES ON RECENT CASES (ENGLISH).

The Law Courts and Rival Commercial Productions.

AN action would lie for falsely disparaging another's goods where special damage resulted. In the case of *Heavens v. Harlow*, 5 Q.B. 633, Lord Denman in the Queen's Bench Division, in 1844, said that if such actions would lie, where special damage was not alleged and proved, a wide door would be open to litigation, and the Courts would be constantly occupied in trying the superior merits of rival productions. In this way the Court would be turned into a machinery for advertisements of rival productions, by pronouncing judicial decisions on their merits. These remarks arose out of the recent case of *White v. Mellin* on Appeal to the House of Lords. The Respondent was the proprietor and manufacturer of a food for infants, known as "Mellin's Infants' Food," and the Appellant, a chemist, at Portsmouth, who sold, among other things, Respondent's food. The Appellant was likewise the proprietor, though not the manufacturer, of a food known as "Dr. Vance's Food for Infants and Invalids." In order to promote the sale of this food the Appellant affixed to, amongst various other articles in his shop, a label on the Respondent's food, stating that the public were recommended to try Vance's Food "as being far more nutritious and healthful than any other preparation yet offered." The Respondent objected to this, and claimed an injunction to restrain the Appellant from selling his (Mellin's) food otherwise than under the original labels or wrappers, and damages were likewise asked for. The Divisional Court dismissed the case, Mr. Justice Romer being of opinion that the advertisement or label was

a mere puff by the Appellant of his particular goods and did not give any legal claim to the Respondent for an injunction or damages. This decision was come to on Respondent's evidence, and the case was thereupon taken to the Court of Appeal, when a new trial was ordered in order that the Appellant's evidence should be heard. The Appellant (White) took the case to the House of Lords, and there the Lord Chancellor pointed out that the question was, had the Appellant disparaged the Respondent's goods, and had such disparagement caused and resulted in damages? The statement that the food was more nutritious and healthful than any other article offered to the public was a general statement applying not only to the Respondent's food, but to all other goods. There was no evidence as to whether the alleged disparaging statement of the Appellant had injured or was calculated to injure the Respondent. It was impossible to say whether damage was a necessary consequence of the label. He (the Lord Chancellor) doubted it very much. The judgment of Mr. Justice Romer was accordingly restored and that of the Court of Appeal reversed. The decision in *Heavens v. Harlow* (*supra*) and many other cases dealing with these questions of disparagement and statements concerning tradesmen and professional men, are given in Addison on Torts, where it is stated that if one tradesman will pretend to be a greater artist than others, it is lawful for them to support their own credit in the same way, and consequently it is not actionable for one tradesman to depreciate the wares and merchandise of another in comparison with his own. So long as it is a mere puff by one of two rival tradesmen, recommending his own articles in preference to those of another, it is defensible on account of the interest the defendant has in the matter; but to say generally of a tradesman that he is in the habit of selling goods which he knows to be bad is actionable.

Income Tax and Debentures Issue Expenses.

One of the trust companies once unsuccessfully contended that the expense of issuing debentures, whereby they raised money for the purpose of carrying on their business of financing other concerns, ought to be allowed in deduction from the amount of their assessment, under Schedule D, as being an expense legitimately connected with, and arising out of, their trade as financiers. The case was that of *The Texas Land and Mortgage Company, Limited* (Appellants) v. *Hotham*, Surveyor of Taxes (Respondent), x. T.L.R. 337. The question was as to deduction of expenses in estimating income. A Company had been formed for the purpose of investments in Texas, and their business consisted in lending out money on the security of land in Texas or elsewhere, and they raised money partly by the issue of debentures, in issuing which they incurred expenses to brokers and in other ways. The Company claimed to deduct these expenses as part of the expense of carrying on their business, as before they could lend money they had to raise it. This claim to deduction was rejected by the Commissioners, as they deemed the expenses to be rather expenses of raising capital. The Court held that the Company raised money by shares to lend it, and to increase their capital raised further money by debentures. The expenses of thus increasing their capital could not, therefore, be deducted. Such expenses were simply the expense of borrowing money for the purposes of the Company. If their claim was allowed, they might as well claim to deduct the expense of floating the Company or of "underwriting" shares. A Scotch case seems also to bear on the same topic, *Arizona Copper Co. v. Smiles*, 29 Sco. L. Rep., 134. There it was held that where a Company borrows money to be employed in its business, and covenants to pay interest and to repay the capital with a bonus, the bonus cannot be allowed as a deduction.

Liabilities of Directors and Auditors.

Proceedings were recently taken against the estate of the late Mr. Coleridge Kennard for the return of money received by him as director and shareholder in one of the Bottomley companies. The Company was in liquidation, and the liquidator contended that dividends had been paid out of capital, and that remuneration had been paid to the directors when none was properly due. The estate of the deceased Kennard was ordered by the Court to be charged with the re-payment of such sums of money as had been received by the deceased, but the estate was exonerated from liability to make good monies improperly distributed and not having reached the hands of the deceased. It was assumed in this case that Kennard had not been one of the directors actually present when the improper dividend was determined on, nor a party to it. Therefore, a director who allows funds to be distributed which should have been retained would appear to have been guilty of breach of trust. A director must act fairly and honestly and will then be safe. Though directors are liable for misuse of powers they are not for losses caused by mistake, nor for *bonâ fide* belief on distribution of dividends that profits permit it. Unless there has been connivance a director would not be responsible for acts of co-directors whereof he has no knowledge. In the case of *Re the London and General Bank* the auditors and directors were held liable for dividends said to have been wrongly distributed. When an auditor's certificate enables dividends to be wrongfully distributed he is guilty of negligence, and the damages he pays will be those resulting from his breach of duty. In order to avoid damages an auditor must fulfil the high standard which ordinary skilled auditors reach. Those who are interested in these points will find further cases in *Carriage Co-operative Association* (27 Ch. D. 322); *Oxford Building Society Case* (35 Ch. D. 502); and *Leeds Estate Build-*

ing and Investment v. Shepherd (30 Ch. D. 787). This case of *The London and General Bank, Limited*, was taken to the Court of Appeal on April 30th, and there it was held that an auditor of a bank registered under the Companies Acts as a limited company is an officer of the Company within the meaning of the Companies (Winding Up) Act, 1890, and he is, therefore, subject to the jurisdiction of the Court. The accountants, however, dispute this decision, and contend that the provisions of sects. 8 and 10 of the 1890 Act do not extend to auditors, for they profess to be fully covered by the existing common law.

* * *

The Factory Acts and Dangerous Machinery.

In mercantile circles much interest has been aroused by the decision in the case of *Redgrave v. Lloyd and Sons, Limited*. The dispute was chiefly as to whether industrial machinery came within the Factory and Workshop Act, 1878, as well as the Act of 1891. The dangerous parts of machinery are enumerated in sect. 5 of the Act of 1878, which is amended by sect. 6 of the Act of 1891, and state what is required to be fenced; sect. 96 of the 1878 Act and sect. 37 of the 1891 Act have also some bearing on the subject. The Divisional Court has now decided in the foregoing case that operative or industrial machinery requires to be fenced as well as that which transmits the motion from the prime force. The power of determining what constitutes dangerous machinery which formerly might be settled by arbitration is now transferred to the magistrate, from whose decision there is now an appeal on questions of fact to quarter sessions, and on questions of law to the Queen's Bench Division. The effect of the statutory sections as amended is general and not confined to a particular class of machinery. When this case was heard in the Divisional Court an appeal

was refused as being a case for a penalty it was a criminal matter, but, of course under the Judicature Act, 1894 (57 and 58 Vict., c. 16, sect. 1), the Court of Appeal can give leave to appeal if it thinks fit to. The present Home Secretary has just now a bill dealing with factories and workshops before a House of Commons Committee, and in connection with this question of dangerous machinery he proposes to leave it to inspectors to declare what is dangerous machinery, but an inspector must give notice to an employer before declaring machinery dangerous. It is professed to give employers a right to appeal to arbitration against any notification by an inspector that parts of his machinery are dangerous, but this right of appeal to arbitration ought to be expressly stated in the Bill and not left subject to the provisions of the existing Acts. The female factory inspectors' advocate (Miss Abrahams), who practises in the London Police Courts, has all her prosecutions and results reported in a female quarterly periodical.

* * *

Penalties under the Margarine Act.

The penalties recoverable under the Margarine Act of 1887 must go to the inspector of the local vestry who prosecutes and not to the receiver of the Metropolitan Police district. That was the decision in the *Queen v. Titterton* in the Queen's Bench Division recently. The Court considered that this was the proper decision to make, under the first part of sect. 26 of the Sale of Food and Drugs Act, 1875, incorporated by sect. 12 of the Margarine Act, 1887, and therefore the penalty was payable to the inspector notwithstanding sect. 47 of the Metropolitan Police Court Act, 1839. This decision will apply to cases other than those in the Metropolitan Courts, and have a far reaching result.

T. F. UTTLEY.

Obiter Dicta.

THE fruits of the Judicature Act are now becoming ripe. The total of causes for hearing during these sittings in the Queen's Bench Division being only 363, and in the Chancery Division 404. No wonder that the Bar is grumbling. The Judicature Act has ruined the Profession.

The fact is, as pointed out by Mr. Justice Manisty some years ago, merchants and traders will not go for justice to the Queen's Courts, on account of the terrible expense and procrastination caused, firstly, by multifarious interlocutory proceedings permitted before a case is ripe for trial, and secondly, by the power of the Judge, at his own sweet pleasure, to disregard the verdict of the jury, and to enter judgment for the other party.

Merchants and traders go to arbitrators instead of to Courts. Some wise heads restored the Guildhall Sittings in the City, hoping thereby to avert the loss. But "once caught, twice shy," merchants preferred to continue to trust to arbitration, and despised the forensic tinsel. So the poor Judge sat in solitary grandeur in the Guildhall with no cases to try.

Next move was to institute a "Commercial Court," within the Courts in the Strand. But curiously there is no official definition of what is a "Commercial Case." So the Judge may cause vast expense by declining to consider "Commercial" what a reasonable merchant justly deems to be so. Result, very few litigants before such an uncertain tribunal.

Mr. Justice Mathew diligently tried to advertise the beauties of the "Commercial Court" a few days ago by describing how in one "Commercial Case" the writ was issued

on the 18th April, and the case tried on the 7th May. Doubtless! but one swallow, my Lord, does not make a Summer.

It should not be forgotten, however, that Mr. Justice Mathew is a man of no common attainments. He is a first rate commercial lawyer, and (barring Royal Commissions) if the fortunes of the Bar are to be mended, and the confidence of merchants in our Courts to be restored, it will be due to the master mind of Mr. Justice Mathew. *Nil desperandum Teucro duce, et auspice Teucro.*

Continental Governments now send their lunatics to England. The cost falling on the maritime county on which the poor sufferer is landed. Of course it is manifestly unfair that England should have to bear the burden of alien paupers and lunatics. The annual cost of lunatics is enormous. Foreign countries must think that we are a nation of lunatics to submit tamely to their impositions.

Our American cousins refuse to admit all aliens who are likely in any way to become a public nuisance. The American Immigration Act of 1892 prevents the landing of "all idiots and insane persons," and compels the Steamship Companies to return them to the ports whence they first received them. What are we about?

The marriage of Mr. Brinckman, a divorced man, with Miss Linton, has caused the further ventilation of the old question whether a Chancellor of a Diocese has power to grant marriage licences and other Canonical dispensations against the will of his Bishop. Here the Bishop of London ordered the Chancellor not to issue licences for the re-marriages of persons whose former marriages had been dissolved by the English Law. To discuss the subject is merely flogging a dead horse. It has again and again been

decided that in all such matters the Chancellor is a free lance. The poor Bishops must grin and bear it.

The question of re-marriage of divorced parties has found a place in the discussions of Convocation, and may produce a split in the Established Church. The present law is a blunder. The "Act to amend the law relating to Divorce and Matrimonial Causes in England" (20 & 21 Vict., c. 85) went too far. It should have modified its sect. 58 and allowed re-marriage in a Church or Chapel to the innocent party only.

The enquiry of the Board of Trade into the complaint of the inhabitants of the South of London as to the alleged lack of water during the month of March has just been completed. The enquiry was held under 15 & 16 Vict., c. 84, which enacts that "If at any time complaint as to the quantity or quality of the water supplied by any Company for domestic use be made to the Board of Trade by memorial in writing, signed by not less than twenty inhabitant householders paying rents for and supplied with water by the Company, it shall be lawful for the Board of Trade, at any time within one month after the receipt of such complaint, to appoint a competent person to enquire into and concerning the ground of such complaint, and to report to the Board of Trade thereon."

Considering the manner in which the Public Acts and the Private Acts relating to the various Water Companies supplying the Metropolis are drawn, it is by the merest chance of good fortune that the Board of Trade were able to discover clause 9 in the above-mentioned Public Act enabling them to enquire into the grievances of the long-suffering ratepayers. It is unfortunate, however, that there should be no power vested in the person holding such

enquiry to administer an oath to the witnesses who come before him. Allegations, moreover, seem to have been made that officials of one of the Water Companies visited the district whence the memorial emanated and frightened the various signatories from appearing as witnesses.

If such be true, it places the Water Company in question in a still more equivocal position. There can be no doubt that during the past winter the supply of water was lamentably short, and the Companies do not appear to have bestirred themselves to remedy the existing evil, save by putting up a few standpipes in some of the streets. They did not, however, forget to apply for payment of their water rate when it was due, and most persons paid the demand. Here is an extraordinary state of things which could happen nowhere but in England. Contract is made between A. and B. that A. shall supply B. with water in consideration of B. paying A. so much money. No water is supplied, yet A. still claims the money from B., and poor, long-suffering, law-ridden B. pays the money. Is not this an inducement to A. never to supply water?

If our legislators would leave the Welsh Church to slumber in peace, and bestir themselves to remedy some actual grievances we should all be the better for it, and the long-suffering ratepayer would no longer be defrauded by a *troupe* of speculators called a Water Company.

The recent case of *Rooke v. Dawson* [1895] 1 Ch. 480, is interesting to those who conduct, and those who pass (or fail to pass) examinations. It seems to shew that, in the absence of any express stipulation to that effect, there is no contract to give a scholarship to the candidate who obtains the highest marks in the scholarship examination. The case carries *Reg. v. Hertford College*, 3 Q.B.D. 693 (1878), a little further. The

drift of that case was that examiners might reject a candidate for examination, if he was not qualified for election ; *Rooke v. Dawson* would go to shew that in such a case, even if he were examined and gained the highest marks, the electors need not elect him. The question is germane to one which appears to have arisen in America, but not in England. The Supreme Court of New York held that a college had no right arbitrarily to refuse to examine a student for a degree, as there was an implied contract to grant the degree on the conditions being fulfilled. The Court would not review a definite reason alleged, but in the particular case it was an arbitrary refusal (*Law Journal*, 27th June, 1891, p. 439). The nearest case in England is a very old one in 1312, in which a mandamus issued to the University of Cambridge to allow Roger Baketon to take his degree (Sir T. Raym., 109).

THE FINANCES OF COSTA RICA.

To the Editor of "THE LAW MAGAZINE."

SIR,—The Republic of Costa Rica has not yet paid its interest on the "A" or "B" bonds, due last January, nor have we yet any advices that the dividends due in July next are forthcoming. May I ask are those Governments of Europe, or of America, who honestly meet their own just obligations, going to allow any repudiation on the part of a third-rate Power?

It has frequently been laid down that a State is bound to support the claims of her subjects who are unsatisfied creditors, or bond-holders, of other States. Yet it is a fact that Governments, as a rule, object to assist their subjects in obtaining redress from foreign States in the matter of loans ; although they frequently support the complaints of subjects who have suffered from foreign Governments in other ways. In principle there is no difference between the two classes of

wrongs, and, as Sir Robert Phillimore expresses it, in his book on International Law, "The right of interference on the part of a State, for the purpose of enforcing the performance of justice to its citizens from a foreign State, stands upon an unquestionable foundation when the foreign State has become itself the debtor of these citizens." The only question for the consideration of a Government is whether it will enforce this right or not. The late Lord Palmerston distinctly laid it down in 1848 in a circular letter to British representatives abroad, that "There can be no doubt whatever of the perfect right which the Government of every country possess to take up as a matter of diplomatic negotiation any well-founded complaints which any of its subjects may prefer against the Government of another country, or any wrong which, from such foreign Government, those subjects may have sustained the British Government has considered that the losses of imprudent men, who have placed mistaken confidence in the good faith of foreign Governments, would prove a salutary warning to others, and would prevent any other foreign loans from being raised in Great Britain, except by Governments of known good faith and of ascertained solvency. But nevertheless, it might happen that the loss occasioned to British subjects by the non-payment of interest upon loans, made by them to foreign Governments, might become so great that it would be too high a price for the nation to pay for such a warning as to the future, *and in such a state of things it might become the duty of the British Government to make these matters the subject of diplomatic negotiation.*" The right, therefore, of a Government to protect its subjects in all cases of dishonesty or insolvency of foreign Governments is well recognised by Great Britain; but it is to be regretted that her internal policy has prevented her from exercising it often. Certainly there never was a time in the history of

this country when more default has been found among its foreign debtors. The mere allegation on the part of a foreign State that she is unable to meet her liabilities should not be too freely accepted by her creditors, especially when there are vast natural resources, as in the case of Costa Rica, which might be conceded to European trustees on behalf of such creditors, or otherwise dealt with.

I am, Sir, your obedient servant,

A BARRISTER.

Lincoln's Inn, May 1st, 1895.

Books Received.

The Law and Practice of Rating. By Edward James Castle, Q.C. Third edition. Stevens and Sons (Lim.), London.

The Principles of Rating Practically Considered. By Edward Boyle, Barrister-at-Law, and G. Humphreys-Davies, Fellow of the Surveyor's Institution. Second edition. Clowes and Sons (Lim.), London.

Mayne's Treatise on Damages. By John D. Mayne, Barrister-at-Law, and Lumley Smith, Q.C., Judge of the Westminster County Court. Stevens and Haynes, London.

Outlines of the Law of Torts. By Richard Ringwood, Barrister-at-Law. Stevens and Haynes, London.

A Manual of the Principles of Equity. By John Indermaur, Solicitor. Geo. Barber, *Law Students' Journal* Office, London.

The Student's Guide to the Principles of the Common Law. By John Indermaur and Charles Thwaites. Geo. Barber, *Law Students' Journal* Office, London.

The Student's Guide to Constitutional Law and Legal History. By the same.

The Student's Guide to the Principles of Equity. By the same.

The Student's Guide to Procedure and to the Law of Evidence. By the same.

Test Questions on Various Works. By the same.

A Treatise on the Law of Res Judicata. By Hukm Chand, M.A. Clowes and Sons (Lim.), London.

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A Manual of Roman Law. By Daniel Chamier. Swan Sonnenschein and Co., London.

Infamia. Its place in Roman, Public, and Private Law. By A. H. J. Greenidge, M.A., The Clarendon Press, Oxford.

Voet's Titles on Vindicationes and Interdicta. Translated by J. J. C. Chitty. Printed at the Ceylon Observer Press, Colombo.

Les Notions Fondamentales Du Droit Civil. By P. Van Bremmelen. Johannes Müller, Amsterdam.

Handbook of the Laws of Scotland. By James Lorimer and Russell Bell, Advocates. Sixth edition. T. and T. Clark, Edinburgh.

Fath al-Zarib, La Révélation De L'Omniprésent (Commentary on Mussulman Jurisprudence with the Arabic Text). By L. W. C. Van Den Berg. E. J. Brill, Leyden.

Parliamentary Government in the British Colonies. By Alpheus Todd, LL.D., C.M.G. Longmans, Green & Co., London.

An Introduction to the Study of Anglo-Muhammadian Law. By Sir Roland Knyvet Wilson, Bart, M.A., LL.M. W. Thacker & Co., London.

The Indian Law of Insolvency. By William Griffith. D. E. Cranenburgh, Calcutta.

List of British Enactments in Force in Native States. Compiled by J. M. Macpherson, Officiating Secretary to the Indian Legislative Department, Calcutta.

Reviews.

Contempt of Court, Committal and Attachment, with the Practice and Forms. By JAMES FRANCIS OSWALD, Q.C., a Bencher of Gray's Inn, a Member of the Middle Temple and the Northern Circuit. Second edition. London: Clowes & Sons, Limited. 1895.

We are not surprised that Mr. Oswald's treatise on the Law of Contempt has reached a second edition, for it is not only the first book published dealing separately with the subject, but it is at once exhaustive in its treatment and agreeable in its style. It is a commonplace that what is easy reading is often very difficult writing, and under the author's lucidity and charm there lies a vast amount of labour and research. The power of the Courts to vindicate their own authority, the author observes, is coeval with their first Foundation and Institution, and consequently these pages traverse the whole long period of our legal history. They possess, therefore, an interest for the antiquary and historian, as well as for the practitioner. The severest student will think it no demerit that the serious matter in the book is enlivened with many a good story, and spiced with the author's wonted humour. For the authenticity of some of the old favourites high authority is cited, as that of the late Lord Selborne in *Watt v. Ligertwood* (L.R. 2 H.L. Sc. 361), for the story of Prince Henry and Chief Justice Gascoigne, and of a reference verified in the British Museum of the case cited by Lord Justice Lindley in his book on Partnership of the partnership action instituted by one highwayman against another in the Exchequer. The savage character of our early jurisprudence is strikingly illustrated by the reprint of the 33rd Henry VIII., c. 12 (1541), for the execution of judgment to "have the right hand stricken off" for the offence of striking in the king's palace; and several instances are given in which this cruel punishment was actually suffered. As a picture of manners varying from age to age, of the discipline of the Courts, the relation of Bench to Bar, the growing independence of the Bar, and of the attitude of the Bench towards public criticism, the book is full of interest.

In its own practical aspect the book will be found to supply all that can be required. Every modern authority appears to

have been cited, both from the professional reports and from those which appear in the *Times* and other newspapers. Among the latest of these is the singular case on Ambassadorial privilege of *Musurus Bey v. Gadban* (1894, 2 Q.B. 352). The subject is clearly arranged under chapters on Contempts Direct; Contempts Indirect or Consequential; Special Contempts and Imprisonment for Offences within the exceptions to the Debtors' Act, 1869. The procedure and practice are also exhaustively discussed, and the interesting question of privilege from arrest upon Civil Process has a chapter to itself. A memorandum, with two forms, by Mr. Registrar Lavie as to Practice, and a list of General Forms, add to the completeness of the volume. Mr. Oswald's well-known opinion that an appeal should be given in all cases of Contempt will not, perhaps, be shared by all; but there will be general agreement as to the desirability of some statutory limitation to the arbitrary jurisdiction now exercised. Mr. Oswald expresses himself strongly on this point, and records the ineffectual attempts which have been made in this direction, beginning with the Bill introduced by Lord Chancellor Selborne in 1883. To the general reader, and especially to the journalist, the book will be as interesting as to counsel or solicitor.

The Law and Practice of Rating. By EDWARD JAMES CASTLE, Esq., Q.C. Third edition. London: Stevens and Sons, Limited. 1895.

The Principles of Rating Practically Considered, with a complete digest of all the important cases. By EDWARD BOYLE, of the Inner Temple, Barrister-at-Law, and G. HUMPHREYS-DAVIES, a Fellow of the Surveyor's Institution, and an arbitrator under appointment of the Board of Trade. Second edition. Clowes and Sons, Limited. 1895.

Both these books are new editions of standard authorities on the important subjects with which they deal, and have just been published in anticipation of the near advent of the sixth quinquennial Metropolitan valuation under the Metropolis Valuation Act of 1869. Mr. Castle limits himself to the Law and Practice of Rating, whereas Messrs. Boyle and Humphreys-Davies write on a wider subject, viz., the Principles of Rating. The respective authors are great authorities on such highly technical and

intricate subjects as Rating and Assessment, not only in so far as those matters apply to the Metropolis itself, but also with regard to their bearing on the vast interests of Railway, Canal, Gas, Water and other great Companies. Mr. Castle (who courteously acknowledges aid from Mr. Robert Frost, Barrister-at-Law, in preparing his new edition) in his preface states that since April, 1879, several undecided points on the Law and Practice of Rating have been settled, more particularly by the recent decision in the House of Lords, when the Lord Chancellor laid down rules for assessing property occupied by public bodies for public purposes. This settlement has enabled Mr. Castle to reduce the bulk of his new edition by virtually omitting the old references to the disputed points; while this is so, he has added references to the mode of rating railways, canals, &c., and has minimised necessary repetition by a system of cross references. He has also introduced for the first time several useful chapters upon Procedure. The plan of Mr. Castle's well digested and excellent work from its first inception has ever been to set out the *ipsissima verba* of important judgments. As a guide to Courts of Quarter Sessions and Assessment Committees, for whose aid legal reports are not always accessible, on pages 607 to 616 will be found a useful appendix of recent decisions given while Mr. Castle's third edition was in the press—notably the judgment in the case of *Hull Docks Co. v. Sculcoates Union*. About two-sixths of his book describe the General Principles of Rating, three-sixths of the book relate to Rating of Different Properties, and the remaining sixth contains the new and useful chapter on Procedure. It is a sure and safe guide, avoiding all speculation as to what the law might be.

Messrs. Boyle and Humphreys-Davies, in their truly monumental re-issue, cover, not only the same ground as Mr. Castle's book, but go beyond it. They introduce not only all the important cases decided during the five years that have passed since their first edition appeared, but they also add reports of a few cases which, though obsolete to some extent as law, are still of value in drawing attention to particular points, chiefly of practice. But the great feature of Messrs. Boyle and Humphreys-Davies' book consists in its masterly treatment of points in the Law of Rating that are still, to some extent, open questions, in that they have not been definitely decided by judgments delivered in the Highest Courts of the country.

Authors who venture into this speculative and somewhat debatable land do so at great risk; they may by adopting such a bold course wreck their work altogether. On the other hand, if they are successful, the influence of their book becomes much greater. Messrs. Boyle and Humphreys-Davies had the courage of their opinions even when publishing their first edition some five years ago, and the success they then met with has encouraged them to adopt, in a higher degree, the same bold methods in their re-issue. True, it may be said, such expressions and comments are mere opinion—mere dicta, and without authority. We think not. For instance, take cognate cases, Lindley on Partnership or Fry on Specific Performance. The opinions expressed in these great works are not only quoted in Court, but the Judges themselves acknowledge their utility in guiding the Bench towards a just decision. Lord Justice Lindley from the Bench recently stated that as everyone was allowed to quote his great work as an authority, he saw no valid reason why he, its author, should alone be debarred from making reference to it? It is within the means of verification of all our readers that Messrs. Boyle and Humphreys-Davies in their first edition, by an *obiter dictum* foreshadowed with almost absolute exactitude the recent decision of the House of Lords in the very important case above mentioned. Further, we are told that soon after the first edition of Messrs. Boyle and Humphreys-Davies's work was published, counsel quoted some of its *obiter dicta* on the hearing of an important case. Counsel on the opposite side objected that such *dicta* were not authoritative, but the learned Judge, who, perhaps, is the most experienced of the whole Judicial Bench in the Law and Principles of Rating, over-ruled the objection, and held that the Court not only approved of the particular expression of opinion, but recognized it as embodying, in lucid language, the very principles by which the Court was guided in such matters. This was, indeed, praise, but it was amply warranted, and we may do well, therefore, to listen with attention to the opinions (though they be so) of authors who have proved themselves so competent.

The book also contains interesting and useful chapters on the question of "How Rent Arises?" This is more an economic than a legal subject, but it is still of some aid to those who wish to make themselves acquainted with principles. From page 1063 to page 1076 an appendix is given of some highly

important railway and other cases that are not reported elsewhere. One of these cases is made more intelligible by a beautifully drawn plan. Procedure is exhaustively dealt with under two aspects: (1) Procedure outside the Metropolitan area; (2) Procedure in the Metropolis. The statutes from 43 Eliz., cap. 2, to 57 and 58 Vic., cap. 53, are given *in extenso* and fill over a hundred pages of closely printed matter, and will prove very convenient for purposes of reference. The Digest of Cases—the authors acknowledge their indebtedness to the proprietors of Fisher's Digest, from which well-known work, by consent, many of the cases have been compiled,—is a veritable labour of Hercules, and fills over five hundred pages of the book. Here the enquirer can find set out, in a beautiful and orderly arrangement, *every* case relating to the subject in which he may be interested. In our opinion, every counsel, solicitor, surveyor, and great company should add both the above books to their libraries. We are convinced that they will never regret the step.

A perusal of the above books leads us to consider two important questions of Rating: First, and the less important, the Railway Companies case, in which it is contended that assessment of Railways and similar great enterprises should be in the hands of some central authority and not left to local assessors, the argument being that it is unfair and unwise to cut up a railway or canal parochially for the purposes of rating. We think, however, that this involves a great principle, and that the Legislature cannot be too jealous against altering the established custom of leaving such matters to local men with local knowledge. Secondly, let us consider the all-important question of the incidence of Rating generally. In matters of Imperial Taxation a man who has at once a small income and is a teetotalter and non-smoker may escape from contributing anything material to the Revenue. Not so, as regards Rating. Every citizen who has to keep a roof over his head, however humble, feels its incidence, and we think that a Royal Commission might well be appointed to consider the justice or otherwise of existing exemptions of persons and property. An ideal Rating Law would so distribute municipal burdens that the Crown, the Great Departments of the State, all Government and other public, or quasi public, buildings should pay a just and equitable proportion of the Rates as well as the humblest citizen.

Mayne's Treatise on Damages, Fifth edition. By JOHN D. MAYNE, of the Inner Temple, Esq., Barrister-at-Law, and LUMLEY SMITH, Esq., Q.C., Judge of the Westminster County Court, late Fellow of Trinity Hall, Cambridge. Stevens and Haynes. 1894.

A new edition of a really good Law book is always welcomed by the profession when it is well done. Mayne's *Treatise on Damages* is a work that has acquired, since its first appearance in 1856, a solid reputation as a valuable text-book on the subject of which it treats. Few practical lawyers can dispense with such a work. Damages are the root and branch of every action of tort, as well as of most other forms of action, whether they be on contracts of sale, contracts relating to the tenure of land, the law of carriers, wrongful conversion, &c., &c. Under the old system of pleading it was impossible for a man to acquire proficiency in that art without a good knowledge of the law of damages; and even at the present day the subject is of foremost importance in the consideration of and advising on cases of most kinds that come before counsel for his opinion; because in the first place if the case is not one for damages in some shape or other, it will, of course, be unwise to advise your client to sue, or at all events not without warning him of the risk he incurs.

The fifth edition now before us by the author, Mr. John D. Mayne, assisted by His Honour Judge Lumley Smith, Q.C., bears traces of the care and industry bestowed upon it in the course of revision, and in adding and annotating the cases subsequently to the previous edition. In other respects, the form and arrangement of the work remain as before. Indeed, it would be difficult to suggest an improvement upon it. It appears that just ten years have elapsed since the previous edition, and during that decade many cases of considerable importance have been decided; and, as far as we have been able to examine the present work, they have been added to the new edition; there is, however, one case which we do not find, viz., the case of *Gatty v. Farquharson*, an action of slander and libel, in which an important decision was given by the Court of Appeal (Lord Esher, M.R., and Bowen and Kay, L.JJ.) upon an application on the part of the defendant for a new trial, on the ground that the damages were excessive. The Court came to the conclusion that the damages awarded were so large as to

amount to what the Court termed "punitive damages," and were ordered to be reduced by one-half, or otherwise a new trial to be granted. The case does not, however, appear to be reported either in the *Law Reports* or the *Law Journal Reports*, but it appears in the *Times Law Reports*, Vol. 9, at p. 593. The decision has since been referred to in the Courts upon more than one occasion, and should therefore have been noted in a new edition of a work devoted specially to the subject of Damages, and having a heading in its Index, "New Trial on ground of Excessive Damages." In other respects the new edition appears to have been ably done, and the work will retain its position as one of the best text-books in our Law Library.

Outlines of the Law of Torts. By RICHARD RINGWOOD, Esq., M.A., of the Middle Temple and N.E. Circuit, Barrister-at-Law. Second edition. Stevens & Haynes. London.

This work is, as it professes to be, but an *outline* of the Law of Torts. It comprises in effect the substance of a series of Lectures delivered by the author to the students at the Law Institution, in a course of lectures on the Law of Torts. Amongst the new matter contained in this edition will be found a chapter on Malicious Injuries, and also one dealing with Torts in respect of domestic and family relations. It must not be taken as a Treatise on the *principles* of the law of Torts, for such are but cursorily treated in the twelve chapters of which the work is composed. The statements of law contained in it are (so far as they go) clearly stated, and capable of being readily understood by all who read it. But in a book on the law of Torts a lawyer who seeks for guidance on any particular branch of the subject usually looks for the *principle* underlying the statement of law it contains; and a student should do likewise. He will, however, not always find the principles laid down in the pages of the work now before us. But, then, it does not profess to be anything more than "an outline of the law." It gives definitions and facts to substantiate statements of the law, and in some instances copious *verbatim* extracts from the judgments, but seldom goes to the root of the matter, by stating the principles upon which the law is founded. And this is a defect in a law book, whether it be intended for the use of students or practitioners. As an instance of an exception to

this, however, is the author's statement of the law as to liability for fraudulent prospectus, in which the principle is first very properly stated and followed by reference to leading cases on the subject, and then a concise statement of the law contained in the recent Directors' Liability Act and its effect upon the leading cases previously referred to. If this style had been followed throughout, the book would have been the better for it. As it is, however, the work contains a clear and accurate outline of the law of Torts, readily intelligible to all who read it, and it is one that will be found alike useful and instructive to the law student as to the layman who may desire to obtain a fair knowledge of the outlines of the law of Torts.

A Manual of the Principles of Equity. A concise and explanatory Treatise intended for the use of students and the profession. By JOHN INDERMAUR, Solicitor. Third edition. London: Geo. Barber.

There are some authors of Law Treatises who compile their works without acknowledgment from other authors; not so, however, Mr. Indermaur: that gentleman candidly acknowledges the use he has made of the works of other authors, and his candour adds to the merits and value of his work, for he has gone to the highest authorities for his material (or rather the *text-books* of highest authority), viz., the ponderous volumes of White and Tudor's leading Cases in Equity, and Story's Commentaries on Equity Jurisprudence, with the result that he has compiled therefrom a very useful, concise and explanatory Treatise on the elementary principles of Equity Jurisprudence for the use of law students, the third edition of which is now before us. Mr. Indermaur is, if we mistake not, the author of several other works for the use of law students.

The present edition is a considerable expansion upon the previous one, which of necessity involves an increase of some 40 or 50 pages of the text. In addition to which the author has, by way of appendix, inserted in full a copy of the Trustee Act of 1893, which occupies just 30 pages of the work. At page 96 he states as his reason for so doing that considerable reference has been made to it, and the author thought it advisable to recommend students "to go through and study the Act of Parliament itself."

But why this particular Act and no other should be thus dealt with is somewhat inexplicable. There are several other statutes of quite as much importance in relation to other matters in the author's treatise to which a similar observation might well be applied, but the fact is that students prefer to have the pith and marrow of such long statutes picked out for them, and such should be the object of a law student's text-book in dealing with statute law.

In other respects the new edition of this work is an improvement upon the two previous ones. As a work on the elementary principles of equity for the use of law students, the book appears to be thoroughly reliable, and where new light is thrown upon leading cases by recent decisions it is shown in the text, and the cases upon which it is founded are cited in support of it.

The new edition may be conscientiously recommended to students as one in which they will find a clear and concise statement of the elementary principles of equity jurisprudence.

The Student's Guide to the Principles of the Common Law.

The Student's Guide to the Principles of Equity.

The Student's Guide to Procedure and Evidence.

The Student's Guide to Constitutional Law and Legal History. By JOHN INDERMAUR and CHARLES THWAITES, Solicitors. London: *Law Student Journal Office.*

Test Questions on various works for the use of Articled Clerks. By the same authors.

Messrs. Indermaur and Thwaites are indefatigable in providing golden roads to learning for aspirants to the legal profession. The quality and quantity of their work require no commendation; they have already obtained an excellent reputation. In the books before us the learned writers ask questions on law, on well-known legal works, such as Williams' Real Property and Prideaux's Conveyancing, and on other leading text-books; they then answer their own questions fully, concisely and lucidly. For the student who desires to work without the aid of a master these treatises will be found extremely valuable. Their plan is also to suggest the books and cases to be read; next to test such reading by questions, and finally to produce and solve a selection of problems actually set at recent examinations. A student about to be examined can hardly fail to derive benefit from a perusal of these books;

or his confidence will be strengthened if he be well prepared, and, on the other hand, if there are weak points in his training these guides will bring them vividly to his attention. We note that in the work on Procedure and Evidence the references to the late Mr. Justice Stephens' Digest are to the fifth Edition, whereas they should have been to the sixth Edition, published in 1893.

A Treatise on the Law of Res Judicata, including the Doctrines of Jurisdiction, Bar by Suit and Lis Pendens. By HUKM CHAND, M.A. 1894. London: Clowes & Sons.

The doctrine of *res judicata*, in its application to civil proceedings, forms the subject of this work, which, though written mainly for the benefit of the legal profession in India, to whom it cannot fail to be specially valuable, will, it is believed, also prove useful to lawyers resident in other countries where the doctrine finds acceptance. In view of the somewhat limited scope of the present work, its bulk is certainly rather appalling. As, however, altogether about four thousand cases are cited, and as, moreover, the author presents the branch of law to which his treatise is devoted, by "way of a review of the cases upon a statement of their facts," it is perhaps inevitable that the text alone should comprise 768 quarto pages. We hope, however, that in future editions the skill of the author may enable him somewhat to compress his abundant materials, without of course sacrificing the integrity of his work; otherwise it may eventually become, by the inclusion of new matter, almost too cumbersome and unwieldy for use as a text-book, and run the risk of being consigned to those library shelves where repose encyclopædias, dictionaries, and other works of mere reference. That Mr. Hukm Chand's work merits a very different fate on account of its many excellences of treatment and arrangement, is our honest opinion. In some respects the system upon which the present work is written resembles that which prevails amongst American legal text writers. Thus, it is, throughout, divided into paragraphs, each of which elucidates some principle or rule cognate to the important doctrine under exposition. On the other hand, in accordance with the method to which English Lawyers are perhaps more accustomed, the facts of the cases cited are usually set forth in the text, instead of giving the actual decisions only, the principal authorities on the various points in India and England concerning the scope and application of the doctrine, being, however, carefully grouped

under the respective clauses of the Indian rule of *res judicata* bearing on those points. The aim of the author has evidently been to make his work a practical, comprehensive and scientific treatise, and certainly it must be admitted that his achievement does not fall far short of it. The text is divided into twelve chapters, which, step by step, expound the branch of law embodied in the doctrine of *res judicata*. A general view of this doctrine is presented in Chapter I., the distinction (not always it seems observed in England) between it and the kindred doctrine of estoppel being there clearly indicated, while the gradual, though still incomplete, recognition of the doctrine of *res judicata* in British India, and in the various Civil Procedure Codes of that country, is carefully explained. The conditions essential to the operation of the doctrine in question are discussed in Chapters II. to VII., where such subjects as Matters in Issue and their identity and determination, the identity of the parties and the jurisdiction of tribunals to pronounce decisions available as *res judicata*, are adequately dealt with. The subjects of judgments *in rem*, and of foreign judgments, are expounded in chapters VIII. and IX.; bar by suit, *lis pendens*, bar by jointness, merger and other cognate matters being reserved for the last three chapters of the work. Most of the English authorities which involve the doctrine of *res judicata* appear to be cited by the learned author. The case of *Caird v. Moss* (33 Ch. D. 22) has, however, eluded his vigilance, while the recent case of *Wegg-Prosser v. Evans* (1894, 2 Q.B. 101), in which *Camberfort v. Chapman* (19 Q.B.D. 229) was disapproved of, and *Drake v. Mitchell* (3 East 251) was followed, is necessarily also omitted as it must have been decided either after the publication of the work or else while it was in the press. The usual tables of contents and of cases precede the text itself, which is immediately followed by 38 pages of Addenda and Corrigenda for which, we fear, the reader will not be very grateful to the author, to whose industry and patience they, however, bear witness. At the end of the volume will be found a fairly good Index, which might, however, with advantage, be somewhat improved by the addition of a greater variety of titles.

Reminders on Company Law. By VILLIERS DE S. FOWKE, Barrister-at-Law. Horace Cox. 1894.

This is another in the useful series of "Reminders" issued from the *Law Times* Office.

It is not a treatise on Company Law, but a list of cautions which indicate some of the perils besetting the draughtsman's road, much as the danger posts on a Highland pass warn the wayfarer from the false step which may make an end of him in mist or storm. It can be consulted with advantage by anyone called upon to advise on Company Law.

Briefless Ballads and Legal Lyrics. By JAMES WILLIAMS. London: A. and C. Black. 1895.

The first edition of this interesting little book was published in 1881, and being out of print called for this the second edition. The Ballads touch happily on such reported cases as *Mylward v. Weldon* (in which the plaintiff was committed to Fleet Prison for drawing a replication of six score sheets, containing much impertinent matter which might well have been contained in sixteen), and *Willis v. The Bishop of Oxford*. The lighter matter also is well done; "The Vision of Legal Shadows," "The Garden Party in the Temple," and "The Ballade of Lost Law," being particularly good. We commend it to our readers as a pleasant interlude when relaxing the bow for a spare half-hour. The metre runs smoothly, the substance is good law, and a touch of caustic humour enlivens the legal lays. In our opinion it is better in every respect than "Pollock's Leading Cases done into English."

Manual of Roman Law. By DANIEL CHAMIER, of the Inner Temple, Barrister-at-Law. London: Swan Sonnenschein and Co.; New York: Macmillan & Co.

The literature of Roman Law, especially that branch of it devoted to making things pleasant for the student, is, by many, deemed to be ample. Mr. Chamier, undeterred by this state of things, has written "A Manual," and claims for it that it supplies sufficient information to enable a reader to acquire a substantial grounding in Roman Law without encumbering his mind with a mass of obsolete detail. The author, in some two hundred pages, clear both as to style and type, has lucidly explained the salient features of the Law of Persons, the Law of Things, and the Law of Actions. We have carefully perused the little book, and (apart from a printer's error on page 66) we can speak highly of the manner in which the author has

treated his well-worn subject. Professedly, the work is not "deep," and, excellent as the book is, we are nevertheless of opinion that on the whole it is too superficial to be safely relied on by a student as his sole text-book even when going up for the Bar pass in Roman Law. More particularly is this so as regards the law of Landlord and Tenant, of Mortgage, and of Sale, while the law relating to Married Women and the *Dos* requires fuller treatment. Again, now-a-days, there is a tendency on the part of the Examiners, appointed by the Council of Legal Education, to require the Roman Law on a particular subject to be contrasted with the English Law on the same subject, and Mr. Chamier does not afford much information on this head. The test questions inserted throughout the book are judiciously selected, and will prove most useful to the student. When, as we hope will be the case, the author publishes a second edition, it would be well for him to give more frequently than he does the Latin equivalents for many of the terms and expressions used in Roman Law. It would also be an advantage if there were included a short chronological table of political events, with a parallel column giving the dates of the various enactments that became law during the some thousand years that passed from the time of the publication of the *Twelve Tables* till Justinian issued *The Institutes*. A student, just before going up for examination, and after a previous study of either Hunter, Sandars, or Moyle, will find this little book of great assistance in, as it were, focussing in his memory the leading principles of Roman Law.

A Handbook of the Law of Scotland. By JAMES LORIMER, Advocate, late Professor of Public Law in the University of Edinburgh. Sixth edition by RUSSELL BELL, Advocate, Sheriff-substitute of Argyllshire. Edinburgh: T. and T. Clark.

This Handbook of the Law of Scotland is to the Scotchman what "My Lawyer, or the People's Legal Adviser" is to the Englishman; being a work intended chiefly for the "non-professional person," though as regards study it is intended to afford a general view of the law and of the legal rights and obligations of Scotchmen, together with the "machinery" of the law (as the author terms it). The best proof that the work has been found useful and in fair demand is the fact that since its first publication in 1859 it has now reached a sixth edition,

which has been revised and edited by Mr. Russell Bell with considerable care and discretion, and its high character as an elementary work upon the law of Scotland has been preserved. Keeping in view the object of the work, it containing a vast amount of useful and valuable information on legal rights and obligations in a condensed and intelligible form, extending to every branch of the law as administered in the various courts of Scotland. Not only to Scotchmen, but to Englishmen, Irishmen, and others, who go to reside in Scotland, the work is indispensable. At the present day, when education has made such wide and rapid strides, every man is desirous of acquiring a general knowledge of the law in the country he adopts as his domicile ; it is in fact his duty to do so, for ignorance of the law affords no excuse for a breach of it, either before a civil or a criminal tribunal. The work as now edited appears to be thoroughly reliable.

An Introduction to the Study of Anglo-Muhammadan Law. By Sir ROLAND KNYVET WILSON, Bart., Barrister-at-Law. London: W. Thacker & Co.

This work deals with the body of rules applied by the Civil Courts in India to the determination of certain kinds of dispute among the Muhammadan community, which numbers not much less than a fourth of the population, being 49½ millions according to the census of 1891. Muhammadan Law, of course, concerns an immense body of religious and ethical doctrine accumulated in the course of ages round a nucleus of divine revelation, covering by its precepts the whole range of human action ; therefore we think that the author has acted wisely by distinguishing by the prefix "Anglo" that small fragment of the Muhammadan Law which the English Government enforces by its own tribunals. Very thoroughly has the author dealt with this fragment, and to those who desire to make some acquaintance with this branch of Indian Jurisprudence, we recommend the above book with every confidence.

The Indian Law of Insolvency, being 11 and 12 Victoria, c. XXI., with an Historical Introduction, Commentaries, and an Appendix of Practical Forms. By WILL. GRIFFITH, Esq., Barrister-at-Law. Calcutta: D. E. Cranenburgh. 1894.

Ever since the days when Lord Macaulay went to the far East, and did so much to introduce Grecian philosophy and

culture amongst the Asiatic youth, strenuous efforts have been made to introduce with the new philosophy large portions of the English law, not only for the benefit of the English who inherit it by birthright, but also for the advantage of the Hindus and Mahomedans. Mr. Griffith, as it is well known, has already provided the Indian and English public with Commentaries on various branches of law and procedure. His most recent publication is upon the Law of Insolvency. The English statute 11. and 12 Vict., c. xxi., regulates the procedure in the three Presidency capitals, while the Code of Civil Procedure does the same service for the country provinces, or the Mufassal. The principles of commercial law apparently are the same for the Mufassal, the Presidency towns, and for all India. Mr. Griffith seems to have collected the decisions of the English Privy Council and those of the Indian Courts with much industry, and to have stated their effect with commendable brevity. The work deserves the attention of those practising in the Indian Courts, to whom it will doubtless prove of considerable service.

Lists of British Enactments in force in Native States. Compiled by J. M. MACPHERSON, of the Inner Temple, Barrister-at-Law, and Deputy Secretary to the Government of India, Legislative Department, Calcutta. Printed by the Superintendent of Government Printing, India. Five Vols., 1888—95.

A valuable collection of British enactments concerning Madras and Mysore, Northern India, Hyderabad, Central India, Rajputana and Western India. The volumes, however, are not authoritative, and the Government of India is not responsible for their contents. They are compiled from the Official Gazettes, supplemented by local information obtained through the Foreign Department, and will undoubtedly be found useful by Political Officers and others desirous of obtaining information concerning British enactments in force in Native States. When it is remembered that the Official Gazettes of the Indian Government fill thousands of pages, the benefit of this work will be better appreciated; it will save the lawyer and the politician the labour and trouble involved in referring to the Official Gazettes; and, if used in conjunction with the Codes published by the Legislative Department, which contain the Statutes, Acts, and Regulations mentioned in these volumes, the work

ought to form a complete handbook to the enactments now in force in the Native States of India ; and we consider that Mr. Macpherson deserves no small meed of praise for his untiring labour and perseverance.

Among periodicals we notice : *The University Law Review*, of New York ; *The American Law Review*, of St. Louis, Mo. ; *The Chicago Legal News* ; *The Southern Law Review*, of Atalanta, Ga. ; *The State Library Bulletin*, of Albany ; *The Law Book News*, of St. Paul, Minn. ; *The Toledo Legal News*, of Toledo, O. ; *The National Corporation Reporter*, of Chicago ; *The Virginia Law Journal* ; *The Canadian Law Times* ; *The Western Law Times*, of Canada ; *India*, edited by Gordon Hewart, M.A. ; *The Madras Law Journal* ; *The Asiatic Quarterly Review* ; *Il Filangieri*, by Dr. Leonardo Vallardi, of Milan ; *The Times Law Reports*, London ; *The Law Times*, London ; *The Law Journal*, London.

THE LAW MAGAZINE AND REVIEW.

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Obiter Dicta.

Le Roi est mort! Vive le Roi! Exit Rosebery, enter Salisbury. To lawyers it rather means, Exit Herschell, enter Halsbury.

The Finance Act, 1894 (57 & 58 Vict., c. 30), vulgarly called the Death Duties Act, has proved too much for the equilibrium of Sir William Vernon Harcourt; he has lost his seat in the saddle, and has failed to win the Derby this time. Historicus should leave such idle pursuits alone, and cleave solely and faithfully to his first love, International Law.

His Finance Act was undoubtedly a disgraceful measure. He has now got his deserts.

Among the members of the Bar returned to the new Parliament, there are none more likely to do well than Mr. J. F. Oswald, Q.C., who distinguished himself by a hard fight at Oldham, and now wears the laurels of his success.

The Sylvan Debating Club announces that it is about to remove its *venue* from Lords to St. James' Hall, Piccadilly, next October. This is the oldest Debating Club in London, having been founded on Twelfth Night, 1868, by the late

Alfred Harmsworth, of the Middle Temple, Barrister-at-Law, the first place of meeting being the Princess of Wales Hotel, Kilburn. A few years after, it migrated to the Eyre Arms, Finchley Road, and in October, 1874, moved onwards and took shelter under the wing of the famous Cricket Club at Lords. Its first President was the late Charles Grevile Prideaux, Q.C., F.R.A.S., of the Western Circuit, Recorder of Bristol, and it teems with members of the legal profession, and of both branches.

We hail with pleasure the fact that two members of the Bar have most deservedly been raised to the Peerage. One, the Right Hon. Sir Henry James, under the title of Lord James of Hereford (not Lord Aylestone, as erroneously reported); the other, the Right Hon. Henry Matthews, under the title of Viscount Glamorgan. It is rumoured, however, that the latter title will be opposed by the Duke of Beaufort, whose Earldom of Glamorgan dates from 1644.

Lord Farrer and others are alarmed at the prospect of bimetallism. They quite forget that Sir Isaac Newton declared that the standard of England was silver, and so it continued until 1816. Bimetallism has existed from the earliest times. Even from a selfish point of view we should not forget that silver is the currency of our vast Indian domain.

It has lately been suggested, in influential circles, that a society should be formed "For the Prevention of Unnecessary Noise." Such a society would be most beneficial. It is little known, save by the medical faculty, what injury—nay, what shortening of lives—is caused to us by noise. The County Council would do well to pay some urgent attention to this matter, and not to leave it to a voluntary association.

The new line bringing the Manchester, Sheffield, and Lincolnshire Railway to London, now being constructed, affords a melancholy proof of what a *troupe* of greedy speculators can do under pretence of benefiting the public. The beautiful neighbourhood of Regent's Park and St. John's Wood, lately teeming with trees, gardens, orchards, and foliage, is being ruthlessly destroyed by these innovators. So far, the mischief is being done under the protection of the Company's Private Act; but loud complaints are now making themselves heard that the Company work at night, and destroy the rest of the inhabitants by the use of steam cranes and the demolition of houses. Here, however, is good ground for an injunction.

It will be remembered that an Irishman, named Cleary, and his family most cruelly burnt the wife of the former to death, under the belief that she was a witch and that so soon as the victim was consumed the real wife would appear at the door of the cabin riding on a white horse. The man has just been sentenced at the Tipperary Assizes in Clonmell to penal servitude for twenty years, the jury having mercifully found him guilty of manslaughter only. The learned judge, Mr. Justice O'Brien, expressed surprise at the degree of darkness of mind, moral ruin, and superstition, existing in the nineteenth century. Yet these are the people who we are told are capable of exercising the Parliamentary franchise.

On the 11th of July the Court of Appeal (the Master of the Rolls and the Lords Justices Kay and Smith) overruled the decision of Mr. Justice Mathew in *Meux v. Great Eastern Railway Company*, and deservedly. The servant of Lady Meux had charge of her portmanteau, he having taken a ticket and being a passenger, and the portmanteau was injured by the negligence of the company. The Court of

Appeal, on the authority of *Hann v. Culliford* (4 C.P.D. 182), overruling Mr. Justice Mathew, decided, that the Company were liable, and that independently of contract a duty was imposed on them by the fact that they dealt actively with another's property.

On the same day the Lord Chief Justice decided in *Acton v. Castle Mail Packets Co., Ltd.*, that a passenger by steamer is bound to read the conditions endorsed on his passenger ticket, even when these conditions release the company from their liability as common carriers, and enable them in consequence to carry his luggage under a special contract. The Court of Appeal is decidedly wanted here. One of the very reasons of the passing of the Land Carriers Act was that the Judges always held that an owner of goods could not be assumed to have read the public notices, or other declarations, of the carriers limiting their liability.

Twenty years ago A married B, who thus became Mrs. A. Shortly after the marriage A and Mrs. A separated by consent, and have since continued to live apart. A after the separation assumed the name C, which he has borne ever since, and has doubtless established it as his name by reputation. Mrs. A still calls herself Mrs. A. Is it really her name? The only ground on which her right to the name of A seems to be supported is that she has obtained it by reputation. See *Fendall v. Goldsmid* (2 P.D. 264).

What is the origin of the term "Crying the wife's Notchell," what is the meaning of it, and to what extent is it used now? The word is sometimes spelt with one "l." In a weekly newspaper having a legal column the question is asked:—"Whether it is necessary to cry what is

generally known as 'the wife's notchel' to prevent her running up debts against her husband?"

We would also like to know the origin of the term *Speculum* applied to so many legal works. Was it legal or historical, or theological in its first use? The theologians can perhaps claim the earliest in the *Speculum Peccatoris* of St. Augustin, followed by the *Speculum Beatae Virginis* of St. Bonaventura, and numerous others down to the *Speculum Sacerdotum* of Canon Newbolt, of St. Paul's (1894). Father John David, S.J., was not satisfied with one *Speculum*, but must have *duodecim specula*! (Antwerp, 1610). The historians can reckon in their favour the *Speculum Historiale* of Vincent of Beauvais and the *Speculum Regis Edwardi III.* of Simon Islip. The lawyers, though they do not quite equal the numbers of the theologians, have still an imposing array. Besides the *Sachsenspiegel* and *Schwabenspiegel* and the *Mirroure of Justices*, they can count Joannes Andreas, *Speculum de Treuga et Pace*, Peter of Blois, *Speculum Juris Canonici*, and the old Norsk Kongo Skugg Sio (*Speculum Regale*). The lawyers, however, seem to have abandoned the idea earlier than the theologians, whichever may have been the first after St. Augustin to render the idea a commonplace.

The Society of Comparative Legislation, of which we have given a notice at page 185, continues to gather in new members. Mr. Albert Gray, of 2, Paper Buildings, Temple, is acting as Honorary Secretary for this Society, which bids fair to become of much practical service.

The "Internationale Vereinigung für vergleichende rechtswissenschaft und volkswirtschaftslehre" has just been established in Berlin. The purposes of this Association are

similar to those of the *Société de législation comparée* of Paris. It includes, in the scope of its researches, not only modern legislation, but also the comparative history of law, ethnological jurisprudence, and comparative social economy.

Since the note on Recent Cases (English), "One Man Companies" (page 335), was in print, the case *Seligmann v. Price*, just decided in the Court of Appeal, points out that *bona fides* being established, the "One Man" formation does not render the Company's doings illegal. Mr. T. F. Uttley remarks on this that the case *Broderip v. Salamon*, therefore, is not necessarily fatal to "One Man" Companies, provided there be good faith and no fraud.

It is consistent with the celerity, with which, as we all know, things are done in Public Offices in this country, that the enquiry of the Board of Trade into the complaint of the inhabitants of the South of London, as to the alleged lack of water during the month of March last, although completed over two months ago, has brought forth no *pronunciamento* from the sapient consciousness of the Board of Trade up to the present moment. On the other hand, the inhabitants of East London, Clapton, Leytonstone, Stoke Newington and Hackney have been crying out during the months of June and July for water. Want of water therefore appears to be in no wise concomitant with frost, as alleged by the Water Companies. When will the legislature adopt real utilitarian measures?

Whilst water appears to be so scarce for domestic and sanitary purposes, it is painful to witness the monstrous manner in which it is wasted by the local authorities not one hundred miles from Covent Garden. Armed with fire-hose and assisted by hydrants they deluge the pavements

regardless of the convenience of the passers-by, and of the welfare of carriages, to say nothing of the injury to the feet of horses. Worst of all, the unoffending ratepayers have to provide for all this waste and nuisance. When will that long-suffering creature revolt?

I.—LATIN MAXIMS IN ENGLISH LAW.

MAXIMS in Law seem to play something of the same part that proverbs do in another field. They represent the concentrated experience of generations of lawyers, or, as Sir James Macintosh puts it as to all maxims, the condensed good sense of nations, and a collection of maxims forms a summary of Law. They are of comparatively late origin, as it takes some time for such good sense to become concentrated. There are accordingly none in the Twelve Tables, and they appear but rarely in Gaius* and the Ante-Justinian fragments,† or in the older English text-books and reports. The history of maxims still remains to be written, and the present article may perhaps claim to break ground hitherto untouched.

The word *maximum* or *maxima*‡ does not occur in the *Corpus Juris* in any meaning resembling that now borne by it, which appears to be the major premiss of a syllogism whence a deduction is made governing the case in point. The nearest word in classical Roman Law is *regula*.

* Instances are *male nostro jure uti non debemus* (i., 53), *civilis ratio civilia quidem jura corrumpere potest, naturalia vero non potest* (i., 158).

† Such as *incertæ personæ legari non potest* (Ulpian, *Reg.*, xxiv., 18); *ex nudo pacto inter cives Romanos actio non nascitur* (Paulus, *Sent.*, ii., 14, 1).

‡ With *maxima*, a neuter plural, becoming in later Latin a feminine singular compare *biblia*, *opera*, where the same change has taken place. The classical *codicilli* also became *codicillum* in Isidorus, who further derives it from the name of the inventor! (*Origines*, v., 24, 14).

Fortescue identifies the two terms,* and is followed by Du Cange, who defines *maxima* as *recepta sententia, regula vulgo nostris et Anglis maxime*. The definition of maxims in *Doctor and Student* (followed by Plowden) is "the foundations of the Law and the conclusions of reason, and therefore they ought not to be impugned, but always to be admitted." With Lord Coke is reached what may be regarded as the standard definition, "a sure foundation or ground of art and a conclusion of reason, so called *quia maxima est ejus dignitas et certissima auctoritas, atque quod maxime omnibus probetur*, so sure and uncontrolled that they ought not to be questioned" (Co. Litt. 11a). He proceeds to state that a maxim is all one with a rule, a common ground, postulatium, or axiom, thus, like Fortescue, identifying it with *regula*.† *Regula*, however, appears not to be quite the same thing as maxim. It is defined in the Digest as *quæ rem quæ est breviter enarrat*,‡ which seems more extensive than Coke's definition, and makes the line between *regula*, *definitio*, and *sententia* a narrow one. For instance, the *regula Catoniana* (the only one which seems to have had a special name) was also called *sententia*.§ Moreover, *sententia* is used in several texts as equivalent to *regula*.|| What is called the *definitio* of Labeo in *Dig.* 36, 2, 22, 1, is really a rule of Law. That of Papinian, in *Cod.* 6, 2, 22, 3, is more like a *responsum prudentis*. In one text *regula* and *definitio* are

* De Laudibus, c. 8. The words of the original are rather remarkable. *Principia autem quæ commentator dicit esse causas efficientes sunt quædam universalis quæ in legibus Angliæ docti similes et mathematici maximas vocant, rhetorici paradoxas, et civilistæ regulas juris denominant*. Grotius defines *lex* by means of *regula* as *regula actuum moralium obligans ad id quod rectum est* (Grotius, De Jure B. et P., i., 1, 9).

† In 343a principle and maxim are identified.

‡ 50, 17, 1. These words are adopted by Bracton as part of his definition of a writ (373a).

§ *Dig.* 35, 1, 86.

|| As in *Gaius*, ii., 235. *Dig.* 34, 2, 10.

combined.* Isidorus (followed by the *Decretum*) says as to the etymology of *regula* that it is so called *eo quod recte ducit, nec aliquando aliorum trahit. Alii dixerunt regulam dictam vel quod regat vel normam recte vivendi præbeat, vel quod distortum pravumque est corrigat.*†

The Roman jurists wrote works under the names both of *Regulæ* and *Definitiones*. Treatises under the name of *Regulæ* were composed by Gaius, Ulpian, Paulus, Modestinus, Rufinus, and Neratius. Sævola wrote both *Regulæ* and *Definitiones*. The principal source of *regulæ* is of course the well-known title of the Digest, *De Diversis Regulis Juris*,‡ though strangely enough only four extracts from any of the works above-mentioned are incorporated by the compilers of the Digest. The legal effect of *regulæ* was laid down by Julianus, *In his quæ contra rationem juris constituta sunt non possumus sequi regulam juris*.§ This agrees with what Paulus says at the commencement of *Dig.* 50, 17, *Non ex regula jus sumatur sed ex jure quod est regula fiat*. In some editions of the Corpus Juris a table of maxims is given under the name of *Regulæ et Sententiæ Juris*, alphabetically arranged by J. Hennequin.

The Glossators and their followers and the Humanists have much to say about *regulæ*, though they generally appeared under the name of *brocarda* or *brocardica*, that is, *regulæ* with comments thereon. What is said about *regulæ* is in the main in accordance with Roman law. Thus, Cujacius says, *ex crebris constitutionibus fiunt regulæ juris*,|| and in another place, *regulæ juris constituuntur ex iis quæ sæpe fiunt, nec enim ullæ sunt regulæ perpetuæ quæ nunquam nos*

* *Secundum veteres regulas et antiquas definitiones vetustatis jura maneant incorrupta*, Cod. 6, 38, 2, 4. Regulariter definire occurs in *Dig.* 5, 3, 9; *Dig.* 7, 1, 25, 5.

† *Decretum*, pt. i., dist. iii., i, 2.

§ *Dig.* 1, 3, 15.

‡ 50, 17.

| On *Dig.* 42, 1, 63.

fallunt; * to which Alciatus adds, a *regula non est recedendum nisi expresse probetur fallentia*.† There is a discussion of *regulæ* in the *Observationes* of Cujacius,‡ and similar discussions at greater or less length seem to occur in the works of most of what may be called for shortness the medieval jurists, especially the Italian.

Writers in the English language have not been less prolific than their Roman predecessors. The number of works dealing directly or indirectly with maxims is a very large one. Indirectly most of the old books of the law make use of maxims, among others Coke upon Littleton, and Jenkins' *Centuries* are conspicuous. Other treatises in which considerable weight is given to maxims are Bracton, Fortescue, Littleton's *Tenures*, Fitzherbert's *Graunde Abridgement*, *Doctor and Student*, Plowden's *Commentaries*, and Doddridge's *Lawyer's Light*; in fact there are few treatises of the Elizabethan period and for a century later in which the writers do not support their propositions of law by maxims, perhaps not always to the point.§ Most of these writers accept maxims as *ipso facto* proofs, Fortescue and St. Germain (the reputed author of *Doctor and Student*) go a little further and enquire into the grounds on which they are accepted as proofs, albeit that the answer to the inquiry leaves matters much as they were before. Fortescue calls in Aristotle to his aid, and affirms that every principle is a sufficient proof of itself, for there is no reason to be given for principles. In *Doctor and Student* || maxims are a fourth of the six grounds of the law. The judge and not the jury is to decide what is a maxim and what is not. Maxims are of the same strength

* On *Cod.* 9, 12.

† *Responsa*, iv., 4.

‡ xvii., 15.

§ Some of the maxims are to be found in law French, e.g., Littleton's *de chescuns terres il y ad fee simple* (§ 648).

|| Bk. i., c. 8.

and effect as statutes. The author declines to assign any reason for their being received as maxims. Like Coke,* he seems to think that they prove themselves.

The earliest work which had maxims for its specific subject-matter—the earliest work, to use a German phrase, on *Regular jurisprudenx*—appears to be that of Bacon,† by whom the question is also briefly treated in the *Advancement of Learning*.‡ The work contains twenty-five *regulæ* or maxims with a commentary. He calls them “Rules and grounds dispersed through the body of the same Laws. Conclusions of reason of this kind are worthily and aptly called by a great civilian *legum leges*, Laws of Laws.” Some of the rules, he says, are ordinary and vulgar; others gathered and extracted out of the harmony and congruity of cases, and are used by lawyers, although they be not able many times to express and set them down. Bacon was soon followed by Noy§ and Wingate.|| In the next century came Francis,¶ the anonymous author of the *Grounds and Rudiments of Law and Equity*,** Branch,†† and Lofft.‡‡ The *Westminster Magazine* of April, 1780, contained

* They need not be proved because they are approved (3 Rep. 40a).

† *Collection of some principal Rules and Maxims of the Common Law of England* (1630).

‡ Book viii., c. iii., Ap. 79—85. He says that rules or maxims are general dictates of reason running through the different matters of law and making, as it were, its ballast. He follows *Dig.* 50, 17, 1, in not taking Laws from rules, but making rules from Laws; for the rule, like the magnetic needle, does not make but indicates the Law.

§ *Treatise of the principal Grounds and Maxims of the Laws of England* (1641, 8th Ed., 1824).

|| *Maxims of Reason* (1658). Wingate divides maxims into those taken from theology, grammar, logic and morality. Accordingly, some of them, e.g., *De mortuis nil nisi bonum*, are hardly legal.

¶ *Maxims of Equity* (1728). These are all English.

** (2nd Ed., 1751.) The writer has been unable to find the date of the first edition.

†† *Principia Legis et Æquitatis* (1st Ed., 1753; 5th Ed., 1824).

‡‡ In the Appendix to the Reports (1776).

a rendering of some Latin maxims into English verse. Viner, in his abridgment (s.v., Maxims), promised a separate treatise on the subject, which does not seem to have appeared. In the present century, the principal names are those of Dr. Broom* and Lord Trayner.† Still more recent works are those of Mr. Cotterell‡ and Mr. Wharton,§ on a smaller scale than the others. Wharton's *Law Lexicon* contains translations of the commoner maxims.||

The theory of the development of maxims from Roman Law held by Kent, "there are scarcely any maxims in the English Law but what were derived from the Romans,"¶ seems to be rather too strongly expressed, and the truth appears to be on the side of Bacon, who says, in his introduction, "some of the rules have a concurrence with the Civil Roman Law, and some others a diversity and many times an opposition." Adopting Bacon's view as in the main correct, one may divide maxims into three classes: (1) Roman, (2) Roman modified, (3) indigenous. It is, of course, impossible to make in any moderate space an exhaustive reduction of all maxims into one of these classes; all that is possible here is to make a selection of some of the more familiar and important:—

(1.) The maxims directly cited from the *Corpus Juris* are comparatively few; they have generally, for some reason or other, been improved, or the reverse, in the process of adoption. Some have not been transferred because they

* *Legal Maxims* (1st Ed., 1845; 5th Ed., 1870).

† *Latin Maxims and Phrases* (1st Ed., 1872; 3rd Ed., 1883). In this work there are no references to original authorities, and it includes phrases of one or two words as well as maxims proper.

‡ *Collection of Latin Maxims and Phrases literally translated* (1st Ed., 1881; 2nd Ed., 1894).

§ *Legal Maxims* (1892).

|| 1st Ed., 1848; 9th Ed., 1892.

¶ *Commentaries*, pt. v., lect. 39.

were incapable of transfer. Broom cites twenty-five from the title *De Diversis Regulis Juris*, but some of them have probably never appeared in any other English text-book. Among those which have been adopted in England without alteration are: *In testamentis plenius voluntates testantium interpretamur*,* *Quod initio vitiosum est non potest tractu temporis convalescere*,† *Nuptias non concubitus sed consensus facit*,‡ *Socii mei socius meus socius non est*,§ *In pari causa possessor potior haberi debet*,|| *Impossibile nulla obligatio est*,¶ *Expressa nocent non expressa non nocent*,** *Res judicata pro veritate accipitur*,†† *Semper in obscuris quod minimum est sequimur*,‡‡ *Nemo plus juris ad alium transferre potest quam ipse haberet*.§§ Among maxims from other titles of the Digest are: *In ambiguo sermone non utrumque dicimus sed id duntaxat quod volumus*.||| *Non enim ex opinionibus singulorum sed ex communi usu nomina exaudiri debere*¶¶ has also been adopted. So has *juris quidem ignorantiam cuique nocere, facti verum ignorantiam non nocere*,*** and from the Code *non exemplis sed legibus judicandum est*,††† and many others. Some Roman maxims become impossible in England. An obvious example is *servus rei publicæ causa abesse non potest*.‡‡‡

* Dig. 50. 17, 12.

† Id., 29.

‡ Id., 30.

§ Id., 47.

|| Id., 128. This appears in the *Decretals* (Sext. 6, 12, 41, 65) as *in pari delicto vel causa potior est conditio possidentis*, in Plowden (296), as *in aquali jure melior est conditio possidentis*.

¶ Id., 185.

** Id., 195.

†† Id., 207.

‡‡ Id., 9; adopted in *Williams v. Crosling*, 3 C.B. 962.

§§ Id., 54.

||| 34, 5, 3, adopted by Knight Bruce, L.J., in 2 De G.M. and G., 313.

¶¶ 33, 10, 7, 2.

*** 22, 6, 9. It should be noticed that this is generally cut down in England into *ignorantia juris neminem excusat*.

††† 7, 45, 13 (called by Albericus Gentilis *lex aurea*).

‡‡‡ Dig. 50, 17, 211. Others are *prætor heredes facere non potest* (Gaius, 3, 132); *nemo pro parte testatus pro parte intestatus decedere potest* (Inst. 2, 14, 15), *unius omnino testis responsio non audiat* (Cod. 4, 20, 9, 1).

(2) Modified maxims have come down from Roman Law as their original source, but have been altered in transmission, partly by combination of two or more Roman texts, partly by indirect adoption from Roman Law as altered by Bracton, the Canon Law, the Glossators and other authorities; partly by incorrect citation from memory by a judge or writer, partly no doubt from conscious attempt at improvement. The question of combination is an interesting one, and a few examples may be found without difficulty. *Falsa demonstratio non nocet quum de corpore constat** appears to be framed from *nihil facit error nominis quum de corpore constat*† and *falsa demonstratione legatum non perimi*.‡ *Nemo debet bis vexari pro eadem causa* combines *si quis per injuriam ad tribunal alicujus me interpellaverit vexandi mei causa potero injuriarum experiri*§ with *bona fides non patitur ut bis idem exigatur*.|| Compare too *actio personalis moritur cum persona* with *beneficium personale est et cum persona extinguitur*¶ and *est enim certissima juris regula ex maleficiis pœnales actiones in heredem non competere*** The *personalis* of the English maxim is beyond what would have been acknowledged by a Roman jurist.

The greater number of maxims to be found in the books has been indirectly adopted, having been filtered through other authorities, or altered or misquoted by judges and text-writers. The maxims or *regulæ* in Bracton are not very numerous; some appear again in subsequent writers and some do not. Examples are *A justitia (quasi a quodam fonte) omnia jura emanant*;†† *non valet donatio nisi subsequatur*

* In Bacon it is *Præsentia corporis tollit errorem nominis et veritas nominis tollit errorem demonstrationis*.

† Dig. 18, 1, 9, 1.

§ Dig. 47, 10, 13, 3.

¶ Dig. 24, 13, 3.

†† 2b.

‡ Inst. 2, 20, 30; cf. Dig. 34, 2, 10.

|| Dig. 50, 17, 57.

** Inst. 4, 12, 1.

traditio;* *pro possessione præsumitur de jure*;† *juste possidet qui prætore auctore possidet*.‡ The latter would have been, strictly speaking, impossible in a country in which there were no prætors. On the other hand, some of Bracton's maxims would have been impossible in Roman Law, and may be regarded as original. Such are *Nullum tempus currit contra ipsum*§ (i.e., *regem*, the more modern form being *nullum tempus occurrit regi*); *lex facit regem*;|| *solus Deus heredem facit*.¶ In one or two instances Bracton, like the *Westminster Magazine*, breaks into verse, and we find

*Re, verbis, scripto, consensu, traditione,
Functura vestes sumere pacta solent,*

as well as in another branch of the law,

*Rem domino vel non domino vendente duobus,
In jure est potior traditione prior*.**

The Canon Law is probably the proximate source of a good many maxims, some of which were no doubt moulded to suit a new state of society. Most of them occur in *Decretals*, v., 41, vi., 12, 5 (*De Diversis Regulis Juris*), and in ii., 23 (*De Præsumptionibus*). Among the more familiar

* 39b.

† 160b.

‡ 196a. This is by no means the only example of the adoption of terms from Roman Law which must have been meaningless in England. Others are *actio legis Aquiliæ* (103a), *actio furti* (150b), and the phrase *si Titius heres non fit tu heres esto* (19a). Similarly Glanvill says *vocandæ sunt sorores*, using a technical term of the prætor's court (vii., 4).

§ 103a.

|| 5b.

¶ 62b.

** *The Grounds and Rudiments of Law* give one maxim in verse (p. 297):

Regula peccatis quæ pœnas irrogat æquas;

but as a rule metrical maxims, classical or otherwise, are rare. In verse written by foreign jurists there are more. For instance, in Grotius' *Paraphrase of Inst.*, 2, 1, the line

Et debet prodesse fides bona possessori,

has a maxim-like ring about it.

are *qui tacet consentire videtur*; * *qui prior est tempore potior est jure*.† Others are slightly altered. *Potest quis per alium quod potest facere per seipsum* generally becomes in English authorities *qui facit per alium facit per se*.‡ *Ratihabitionem retrotrahi et mandato non est dubium comparari* becomes *Omnis ratihabitione retrotrahitur et mandato priori æquiparatur*. The Canon Law form is rather nearer this than the Roman forms, in *maleficio ratihabitionem mandato comparari*§ and *ratihabitione mandato comparatur*.|| Many of the Canon Law maxims, like those of Roman Law, are obviously impossible of acceptance in the English system. Such are *Delictum personæ non debet in detrimentum ecclesiæ redundare*; *indignum est et a Romanæ ecclesiæ consuetudine alienum ut pro spiritualibus facere quis homagium compellatur*; *solus Papa privat Imperatorem*.

A large number can be traced to the Glossators and their successors, e.g., *habemus optimum testem confitentem reum*; *actori incumbit rei probatio*; ¶ *cessante ratione legis cessat ipsa lex*; ** *causa cessante cessat effectus*; *semper præsumitur pro negante*; *dolus circuitu non purgatur*; *ignorare leges est lata culpa*.†† Here again some of the maxims deal with a procedure which was always foreign to the English tribunals, e.g., *Tortura purgatur infamia*; *vilitas personæ est justa causa torquendi testem*.

There is a large number which seems to have been misquoted or improved from the *Corpus Juris* without having

* Adopted in Jenkins' *Cent.*, 32. The original is *qui tacuerunt consensisse videntur*. *Dig.* 50, 17, 142.

† *Co. Litt.* 14a.

‡ So given by Lord Cottenham in *Mackersey v. Ramsays*, 9 C. and F. 850. *Co. Litt.*, 258a, has it a little differently.

§ *Dig.* 43, 16, 1, 4.

|| *Dig.* 46, 3, 12, 4.

¶ The nearest classical form is *ei incumbit probatio qui dicit non qui negat*, *Dig.* 22, 3, 2.

** Criticised by Austin, *lect.* xxxvii. The gloss is on *Dig.* 35, 1, 72, 6.

†† Bartolus, *Prima super Codice*, on *Cod.* i., 14.

come through any intermediate authority. Here, however, the writer is on dangerous ground, and a more complete study of the Glossators and Canonists might lead in some cases to a different conclusion. How easily a classical maxim may be misquoted is shown by the way in which the familiar *jus publicum privatorum pactis mutari non potest** was treated by two eminent English lawyers. Sir William Follett quoted it as *pactis privatorum juri publico derogari nequit*.† Dr. Lushington put it a little differently, *Pactis privatorum juri publico non derogatur*.‡ It may be interesting to append a selection of some of the better known maxims with their nearest classical analogues. *Actor sequitur forum rei* (which seems to appear for the first time in England in Branch) is from *actor rei forum sequi debet*.§ *Delegatus non potest delegare* is an extension of *A judice judex delegatus judicis dandi potestatem non habet*.|| Here English lawyers have applied to agency a maxim which originally applied only within very narrow limits, and to a class whose duties were judicial not commercial. *Impossibilium nulla obligatio*¶ has been similarly extended, and becomes in Coke *lex non cogit ad impossibilia*.** “The maxim *volenti non fit injuria*, originally borrowed from the Civil Law, has lost much of its literal significance.”†† It has been borrowed but paraphrased from *nulla injuria est quæ in volentum fiat*.‡‡ A reminiscence of the classical *solum partem ædium existimo nec alioquin subjacere uti mare navibus*§§ and *cælum quod supra id solum intercedit liberum esse debet*||| results in *cujus est solum ejus est*

* Dig. 2, 14, 38.

† Arguendo in *Swan v. Blair*, 3 C. & F. 621.

‡ Arg. in *Phillips v. Innes*, 4 C. & F. 241.

§ *Frag. Vat.*, § 325.

|| *Cod.* 3, 1, 5.

¶ Dig. 50, 17, 185.

** *Co. Litt.*, 231b.

†† Lord Watson in *Smith v. Baker* [1891] A.C. 355.

‡‡ Dig. 47, 10, 1, 5.

§§ Dig. 6, 1, 49, pr.

||| Dig. 41, 1, 7, 10.

usque ad cælum. *Quidquid plantatur solo solo cedit* is almost identical with *omne quod inædificatur solo cedit*.* Ulpian's *partus sequitur matrem*† by the change of one word (perhaps not for the better) becomes *partus sequitur ventrem*. Paulus' *ex nudo facto inter cives Romanos actio non nascitur*‡ is considerably expanded when it appears as *ex nudo pacto non oritur actio*.§ *Victum in expensarum causa victori esse condemnandum*|| is Coke's *ubi damna dantur victus victori in expensis condemnari debet*.¶ “An Englishman's house is his castle,” is in legal Latin *Domus sua cuique est tutissimum refugium*,** and is probably based on *nemo de domo sua extrahi debet*.††

(3) Maxims of indigenous growth include some which would have been possible in Roman Law, others which would have been impossible, and this for historical, political, or etymological reasons. Among those which might have existed in Roman Law, but do not seem to have been framed by Roman jurists, are *Æquitas sequitur legem*, *de minimis non curat lex*, *ubi jus ibi remedium*, *in fictione juris semper est æquitas*, *interest reipublicæ ut sit finis litium*, *locus regit actum*, *mobilia sequuntur personam*. The badness of the Latin is sufficient to show that *surplusagium non nocet*‡‡ is indigenous. Historical considerations will account for those already mentioned in treating of Bracton and for *non jus sed seisinā facit stipitem*,§§ *hæreditas nunquam*

* Dig. 41, 1, 7, 10.

† Reg. v., 9.

‡ Sent. ii., 14, 1.

§ This occurs in Cujacius on Dig. 42, 1, 63, and seems in direct opposition to the Canon Law *pacta quantumcunque nuda servanda sunt* (*Decretals* 1, 35, 1).

|| Cod. 3, 1, 13, 6.

¶ 2 Inst. 289.

** *Semayne's Case*, 5 Rep. 91.

†† Dig. 50, 17, 103.

‡‡ Branch, 216. In Jenkins' Centuries *surplusagium* is in the more classical form of *superflua*. The maxim is much more extensive than *non solent quæ abundant vitiare scripturas*, Dig. 50, 17, 94.

§§ Fleta vi., 14.

ascendit, ecclesia non solvit decimas ecclesiæ, lex Angliæ sine parlamento mutari non potest,† quæ in Curia Regis acta sunt rite agi præsumuntur,‡ Curia Regis non debet deficere in justitia exhibenda,§ quod nullius est est domini Regis,|| possessio fratris de feodo simplici facit sororem esse heredem.¶*

Enough has perhaps been said to prove the interest of a theme which would, if carried out with completeness, probably be the work of a lifetime. Few students of jurisprudence would be qualified, and probably still fewer would be willing, to devote the time to a careful search among the voluminous and forgotten writings of jurists whose very names are only known to students of the history of law. But in order to make the list complete some such unremunerative and assiduous toil as this would have to be undertaken. It has probably now become practically impossible.

JAMES WILLIAMS.

* Glanvill, vii., 1.

† 2 Inst., 619.

‡ 3 Bulstr. 43; cf. Co. Litt. 6b, Jenkins, *Cent.*, 185.

§ Jenkins, *Cent.*, 335.

|| Fleta iii., 12.

¶ Co. Litt., 14b.

II.—FOREIGN MARITIME LAWS :

IV. SCANDINAVIA.

SINCE the last instalment of the Scandinavian Maritime Law appeared, in February, 1894, the hope expressed that Norway would join the other Scandinavian States, Sweden and Denmark, in enacting the Law has been realized, and the Norwegian Version, which differs only in small details from that in force in the other States, came into operation in Norway on the 1st July, 1894.

In succeeding instalments, any variations between the versions will be noted whilst adhering to the Danish Version as the first which came into operation.

An English translation of the Danish Version of The Chapter on Average, which is now presented, appeared in a Parliamentary Paper, Fo. 1892, No. 240. That translation was made by Vice-Consul Schmidt, of Elsinore, who, as already stated, has supplied the literal translation of the Danish Code here edited and annotated, and has been treated in the same way. The construction of some sentences being altered in accordance with English use, whilst the sense of the original is, it is hoped, preserved.

CHAPTER VII.

Average.

ART. 187. All damage voluntarily done to ship or cargo, in order to avoid a danger threatening both, as well as all sacrifices made for this purpose and all necessary damages and expenses incurred in connection with, or in consequence of, such acts, is considered to be General Average. General Average is borne by ship, freight, and cargo in proportion to their values, and in conformity with the rules laid down in sects. 207 to 212.

B. 104, F. 401, G. 702, 718, H. 698, 704, I. 647, P. 636, S. 812.

188. The following must be made good as General Average:—

- (1.) Cargo and ship's apparel jettisoned for the purpose of lightening a ship in distress, or to escape enemies or pirates, as well as goods and ship's apparel washed overboard, in consequence of, or in conjunction with, such jettison, as well as other damage caused by the jettison, or by the measures it necessitates.
- (2.) Masts, sails, or other ship's apparel cut away, anchors and chains slipped, and other damage sustained in consequence of, or in conjunction with, such cutting away or slipping, if the sacrifice is made in order to save ship and cargo from a common danger, as, for instance, to avoid a stranding or a collision.
- (3.) Damage done to ship or cargo in order to prevent the breaking out of fire, to extinguish a fire already broken out, to give water access to the pumps, and to facilitate the escape of the water when the vessel has been struck by heavy seas swamping the deck.
- (4.) Expenses incurred for salvage to bring ship and cargo out of a danger threatening both, as also damage done to either of them by ships whose assistance is made use of.
- (5.) Damage done to the ship or cargo by the master intentionally running the vessel aground to avoid a greater danger threatening both,* but only in so far as it can be shewn that in doing so a sacrifice has really been made.
- (6.) Damage done to ship or cargo and expenses incurred in getting the vessel off the ground and conveying her and her cargo into a place of safety. If the voyage cannot be prosecuted, either on account of the

* The words after the comma do not appear in the Swedish Code.

impossibility of getting the vessel off, or by her being condemned after being got off, the General Average only comprises the damage done and the expenses incurred up to the time it became obvious that the voyage could not be prosecuted.

- (7.) Expenses incurred in seeking a port of refuge for the purpose of bringing ship and cargo into safety, for instance, when the ship has become unseaworthy during the voyage, or the voyage cannot be prosecuted owing to a declaration of war, sudden breaking up of ice,* or any similar occurrence which would expose ship and cargo to imminent danger.

The expenses thus classed as General Average are :—

Pilotage, light, beacon, and harbour dues, with other charges incurred through the vessel's detention in the port of refuge, expenses incurred by discharging, storing, and restowing the cargo in case such discharge, &c., was necessary to enable the vessel to enter the harbour, or was rendered necessary by the same cause as that which compelled the vessel to make a port of refuge, &c. The following are also considered to be General Average :— Master's and crew's wages and victuals during the time the vessel is detained in the port of refuge, if these expenses could not have been saved by discharging the crew. If the detention in the port of refuge is prolonged from some other cause, such as the prosecution of the voyage being hindered by ice or the state of the weather, or if the repairs themselves are retarded unreasonably, then the wages and victualling expenses thus accruing will not be made good in General Average. If the voyage terminates in the port of refuge, the expenses will only be made

* See § 190, *post*.

good up to the day on which it was decided to terminate the voyage there.

No losses caused by natural wastage, leakage, or deterioration of the cargo or any other damage it may sustain in the port of refuge, nor expenses incurred in attempting to prevent such losses and damages, are considered as General Average. Any damage which the cargo may sustain, either in discharging or reloading in a port of refuge is only made good in General Average if such discharging or reloading had to be accomplished by means of other craft or in any other unusual way.

Special expenses rendered necessary in a port of refuge on account of the dangerous nature of the cargo are not included in General Average.

Expenses incurred in a port of refuge for the temporary repair of damage not caused by a General Average act must be made good in General Average, if by such temporary repair expenses are saved which otherwise would have been necessary and would have been allowed in General Average.

(8.) Loss or damage sustained by the cargo in a case of distress by any part thereof being made use of to enable the ship to proceed on the voyage, or in any other way to save the ship and her cargo, also losses of, or damages to, the ship's apparel, when used in a case of necessity for any other purpose than that for which they were intended.

* Coals or other engine-room stores that a steamer consumes in order to get off the ground, as also whatever is consumed in working the pumps in case of springing a leak is made good in General Average.

* This has recently been decided to be the Law in England. *The Bona*, 1895, P. 125.

Also stores, &c., consumed in removing the vessel from one berth to another in a port of refuge, and in discharging and reloading the cargo in cases where these expenses are items of General Average, but, on the other hand, what is consumed by making and leaving a port of refuge, or generally owing to the prolongation of the voyage even if this is owing to a General Average is not made good.

See §190 (4), *post*.

- (9.) Damage intentionally done to ship or cargo in order to facilitate its defence against enemies and pirates, as also damage sustained during such defence, the ammunition used in such defence, and also goods or money employed for the purpose of saving or ransoming ship and cargo.
- (10.) Subsistence and medical expenses for members of the crew who are wounded in defending the ship against enemies or pirates, or in carrying out directions given to save the ship and cargo, as long as they are under medical treatment, burial expenses for the killed and the increased expense of replacing the seamen wounded or killed by others.
- (11.) Freight lost in consequence of a General Average act.
- (12.) Losses and expenses incurred through the necessity of raising funds to cover the amount of a General Average, such as commission, interest, and insurance premium upon the amount advanced, bottomry-premium, if it has been necessary to raise the funds by a bottomry-bond, and any losses which, owing to difference in price, are sustained by the sale of cargo in a port of refuge to cover General Average expenses.
- (13.) Commission to agent employed in transacting the ship's business connected with the Average.
- (14.) The costs of the sea protest, surveys and valuations, and the expenses of procuring the documents and

particulars required by the Average-stater, and the costs of the Average statement itself.

B. 99, 101, F. 397, 399, G. 702, 703, H. 696—698, I. 642, 643, 646, P. 635, R. 391, 397 *et seq.*, S. 806, 808. E. 235, 237.

189. General Average does not include damage caused by an accident during the carrying out of measures taken in order to save ship and cargo, even if the sacrifice itself is avoided thereby, nor damage which only remotely and indirectly is connected with these measures.

Thus a topmast carried away by a gale while the crew is engaged in cutting away the lower mast, even if the cutting away of the lower mast was thereby avoided, damage to ship and cargo in a port of refuge by storm, fire, theft, or similar accidents, losses sustained from the cargo not being delivered within the time stipulated in consequence of General Average, or any extra charge for insurance on the vessel or compensation for the loss of expected freight caused by the detention under Average are not allowed as General Average.

190. The following do not share in General Average:—

(1.) Goods loaded in the ship without the master's knowledge, moneys, documents of value, * precious stones, or other valuables which have not been declared as laid down in Art. 143.

B. 109, F. 420, G. 710, H. 733, I. 649, P. 640, S. 816.

(2.) A deck-load thrown overboard or damage done to a deck-load by a jettison, or in consequence of measures taken to save ship or cargo, unless the jettison was effected for the purpose of lightening a stranded vessel.

F. 421, G. 710, H. 733, I. 650, P. 641, S. 855.

The term "deck-load" includes not only goods carried on the upper deck, in the boats, or hanging outside the vessel, but also goods stowed in such superstructures as are not built into the vessel's

* Precious stones are not specially mentioned in the Swedish version.

frame-work, or in other ways give sufficient security against sea-damage, or being washed overboard.

See §117, *ante*.

- (3.) Damage done by such measures to ship's apparel lying on the deck when not in its proper place.
- (4.) Damage done by carrying a press of sail, even in order to avoid stranding or to escape from enemies or pirates, damage to sails, and, in steamers, to boilers and engines, unless such damage is caused in attempting to get the vessel off the ground, and also damage caused to the pumps in attempting to keep the vessel free of water.

See §188 (8).

G. 709 (3).

- (5.) Losses caused by cutting away masts, spars, and other gear already broken in consequence of a Particular Average accident, even if this cutting away is rendered necessary in order to avoid a danger threatening ship and cargo.
- (6.) Damage done to spontaneously ignited or heated cargo by * throwing it overboard, pumping water over it, or by any other measures taken to extinguish the fire, as also, in every case of fire on board, the damage done by such measures to any part of the cargo already ignited.
- (7.) Expenses incurred in consequence of the ship having to make a port of refuge on account of deficiency in her outfit or stores, or through † ice or other hindrances caused by the weather.

P. 658, S. 820, I. 646 (4), P. 658.

191. The fact that the sacrifice was rendered necessary in consequence of an error of judgment or neglect of

* No special mention of "throwing overboard" appears in the Swedish version.

† See §188 (7).

either *master or crew, or any other person on board, does not preclude the damages sustained being brought into account as General Average, but the person who caused the damage cannot claim compensation for any loss he may have sustained himself owing to the Average act. If the danger to which the ship was exposed was attributable either to the *master or to anyone else for whom the owner is responsible, the latter has no claim for compensation for the loss he sustains.

If the master or anyone else on board who has acted on his behalf committed an error of judgment in estimating the nature of the danger, or if he has erred in the choice of the proper measures to avoid such danger, then such error shall not preclude the damages sustained being made good in General Average, but the owner cannot claim any compensation for the loss he has sustained, unless the error committed appears excusable under the circumstances.

Whoever thus loses his right to compensation, or who, in consequence of an error committed by a third person, has had to pay an Average contribution, can claim reimbursement from the person on whom the responsibility rests.

192. General Average is not precluded even if the object of the sacrifice is not attained.

B. 111-113, F. 423-425, G. 705, H. 734-735, I. 651, P. 642, S. 856, 860, 861.

193. A General Average distribution is not excluded by the fact that the sacrifice has comprised either the whole

* The Swedish Code does not specially mention the master in either of these cases, but speaks only of the "act of some person" in the former case, any "fault or neglect for which the owner was answerable" in the latter; the Norwegian Code agrees with that of Sweden in the former case, and with the Danish text as here given in the latter.

Cf. French Law as laid down by the *Cour de Cassation* in *Crowley v. St. Frères*, 21 J.D.I. P. 806. 10 R.I.D.M. 147, *Oriental S.S. Co. v. Genestal*, 10 R.I.D.M. 721.

G. 704.

of the ship or the whole of the cargo, nor by the fact that after the Average only a part of the ship or a part of the cargo alone has been saved.

There is a slight verbal difference in the wording of both the Swedish and Norwegian Codes, but it does not appear to affect the sense.

G. 705.

194. When a sacrifice is to be made it is the duty of the master to see that such sacrifice does not involve a heavier loss than is necessary for the attainment of the object in view. Thus, in a case of jettison of cargo or ship's apparel, the heavier and least valuable articles must be, as far as practicable, thrown overboard first, and after them the lighter and more valuable goods.

If the master has erroneously caused a greater amount of damage than necessary, the rule laid down in Art. 191 comes into operation.

F. 411, G. 504, I. 645, S. 815.

195. Before doing any act out of which a General Average claim may arise, the master must, as far as practicable, consult the most experienced and ablest persons on board. A record of this must, as soon as possible, be entered in the log-book, or be otherwise reduced to writing if no log-book is kept on board, in order to be produced when the sea-protest is made. In the record must be set forth all the circumstances which may be of importance for the adjustment and apportionment of the Average, especially the purpose for which the sacrifice was made, and, as far as possible, an accurate list of the things sacrificed or other information as to the extent of the damage.

As to consulting, see Art. 59.

F. 410, 412, P. 655, S. 813, 814.

196. Damage to the vessel and her apparel must be valued by competent persons appointed under Art. 41 at the place where the repairs are effected, if the ship is repaired in a port of refuge, or else at the termination of the voyage.

The surveyors must state in their report what the repair of each separate damage will amount to. If new articles have to be procured in place of those damaged, it must be stated what these new articles will cost, as also what the damaged articles are worth.

All damage arising from old age, decay, and the like, must be kept separate from the damage caused by the Average, and valued separately.

F. 414, G. 711, S. 833, 854 (6).

197. In calculating a General Average loss on ship and apparel, the valuation of the surveyors is to be taken as a basis when the damage is not repaired, and also when the surveyors' estimate is less than the amount which the repairs cost, while on the contrary the actual expenses of repairs are to be taken as a basis when these are less than the estimate.

G. 711.

198. Damage to iron vessels with masts and spars of iron is made good to the full amount of the cost of repairing them, if the vessel at the time of the accident has been under five years at sea. If the accident has occurred after this, but before the ship has been ten years at sea, one-sixth is deducted as the difference between new and old. If the ship has been over ten years at sea, then one-third is deducted. Damage to the engines is made good in full if they have been in use for a period of less than three years when the accident occurred, if the damage occurs after this, but before they have been in use for six years, one-sixth is deducted; above that time the deduction amounts to one-third. Damage to wooden masts, spars, and standing gear is made good in full if the vessel has been under one year at sea, and * other damage also if the vessel has been under half a year at sea; after the lapse of † one year,

* Swedish Code specially mentions "Damage to boiler" in this place.

† Swedish and Norwegian Codes for "one year," read "these periods."

one-third is deducted. No deduction is made for anchors, and for chains only one-sixth is deducted.

If the vessel is a wooden one, the damage to the hull is made good in full if the ship has not been two years at sea when the accident occurred; if the damage has been sustained after this, the deduction amounts to one-third new for old. Other damage is made good in the same proportion as stated above in respect to iron vessels.

From the amounts thus estimated is deducted the value of old material which has been replaced with new either at the valuation fixed by the surveyors, or the net proceeds realized if sold by auction.

If the vessel is found to require new metal sheathing, the compensation is calculated in such a way that from the sum it would cost to give the ship a new coat of sheathing of the same weight as the old originally had, is deducted the value of the old sheathing as metal. The sum thus left is made good with a deduction of one-sixtieth for copper or yellow metal, and of one-thirtieth for zinc or other metals, for each whole month of 30 days which have passed since the old sheathing was put on. If the ship has had her copper or yellow metal sheathing for more than five years or her sheathing of other metal for more than two and a-half years, there is no compensation.

G. 712, H. 713, S. 854 (6).

199. If the ship, after a General Average act, is either a complete wreck or has sustained such serious damage that the surveyors declare her not worth repairing, then the value which the ship is estimated to have had at the moment the sacrifice took place, after deducting the proceeds of what is saved, is the value to be made good.

See Art. 6, *ante*.

200. The compensation for goods lost by a General Average act is calculated at the price such goods would have fetched at the port of destination on their arrival

there, or, if the remaining goods do not reach this port of destination, at the prices ruling in the port where the voyage terminates, after deducting freight, duty, and other expenses which the cargo-owner saves in consequence of the goods not reaching their port of destination.

If the real value of the goods cannot be found out in any other way, such value must be fixed by * competent persons. If the goods have been sold in the port of refuge their net proceeds should be the very least which has to be claimed in compensation.

F. 415, G. 713.

201. If goods have been damaged by a General Average act, the compensation is calculated by deducting from the value of such goods in an undamaged state the value of the goods as saved. This value has to be fixed by † competent persons ; if the goods have been sold, the proceeds of the sale will form the basis. From the amounts as per estimate or per sale have to be deducted the freight and the expenses mentioned in the foregoing paragraph.

G. 714.

202. If goods that are lost or damaged by a General Average act have already depreciated in value by a particular Average accident or by inherent defects, or in some other way, or if goods damaged by a General Average act have sustained further damage by accidents not connected with the General Average, then an amount equal to the loss in value arising through any of the foregoing circumstances has to be deducted from the compensation. The amount thus to be deducted has to be fixed by ‡ experts who will take into consideration the damage which

* For appointment of surveyors see Art. 41, which is specifically mentioned here in the Swedish version.

† See note to Art. 200, *ante*.

‡ See note to Art. 200.

other goods of the same or a similar description, and which did not receive any damage by the General Average act, have sustained.

G. 715, S. 850.

203. No compensation is allowed in General Average for goods for which no bill of lading has been signed and which are not mentioned in cargo book, manifest, or other shipping documents. The master's, crew's, and passengers' effects and travelling requisites will be made good if lost by a General Average act.

The Swedish Code requires the Master, &c., to verify the loss in writing.

B. 109, F. 420, G. 710, H. 731, 732, 733, I. 648, 649, P. 639, 640, S. 816.

204. The freight for goods lost by a General Average accident, or which have been sold in a port of refuge to cover Average expenses, is made good by the amount which would have been payable if the goods had remained in the ship until she had reached her port of destination, or, in case the voyage was interrupted, at the port where the voyage terminated. From the amount of the freight which is lost the special expenses which the shipowner saves by the sacrifice or sale of the goods must be deducted.

As to calculation of *pro rata* freight see Art. 160, *ante*.

G. 717.

205. The right to compensation in General Average may be wholly or partly lost if anything belonging to either ship or cargo, after having first been damaged by a General Average act, afterwards is destroyed or sustains damage by a Particular Average accident, if it can be shewn that such thing, even if the General Average act had not taken place, would have been wholly or partly destroyed by the subsequent Particular Average accident.

In the same way the General Average distribution is modified or becomes of no effect if it can be proved that objects lost by a General Average act would have been

destroyed or damaged by a subsequent Particular Average accident, if they had remained on board.

G. 707.

206. Damage caused partly by a General Average act and partly by a Particular Average accident, as well as the expenses common to both Averages, must be equitably and justly distributed between the two Averages.

G. 706, S. 850.

207. The ship contributes to the General Average in proportion to—

- (1.) The amount which two duly appointed * surveyors declare to be her value at the port where the voyage ends; and
- (2.) The amount which in the Average statement is to be made good for damage to the ship, provided these repairs have not been effected.

If the ship, after the General Average occurred, has received improvements or repaired damages not connected with the General Average, then the value of such improvements and such repairs have to be deducted from the amount stated by the surveyors to be her value.

G. 719, H. 727, I. 654, P. 647, S. 854 (7).

208. The cargo contributes to the General Average in proportion to—

- (1.) The value of the goods which were on board when the General Average occurred, and which were still on board or in safety when the voyage terminated, such value to be fixed according to the rules given in Arts. 200 and 201.
- (2.) The amount to be made good in compensation for goods sacrificed or damaged by General Average occurring during the voyage.

* See note to Art. 200.

- (3.) The compensation which the cargo-owner has to receive from the shipowner for goods which, in the course of the voyage, have been lost, damaged, or sold for the ship's benefit, as under Art. 149.

The reference to Art. 149 does not appear in the Swedish version.

G. 720, H. 727-730, I. 655, 656, P. 639, § 1 (2), 649, S. 854.

209. The freight contributes to the General Average on half—

- (1.) Of the gross freight earned at the termination of the voyage, and
- (2.) Of the compensation allowed in the General Average statement for freight lost.

* If no specific freight has been agreed upon, the rate quoted at the port of shipment for similar goods at the same season of the year, must be adopted as a basis for calculating the amount.

G. 723, H. 727, I. 647, P. 639, § 1 (3).

210. If an advance of freight has been made on the condition that it is not to be repaid if the ship, on account of accidents intervening, earns no freight; the owner is not bound to contribute to the General Average on the amount thus advanced.

See Art. 151.

I. 654.

211. From the values which, according to the rules laid down in Arts. 207 to 210, have to contribute to the General Average must be deducted—

- Firstly, any contribution to a subsequent General Average occurring later on during the same voyage; and
Secondly, any expenses incurred in saving or preserving the objects contributing, and for which no compensation is allowed in General Average.

G. 724.

* The Swedish and Norwegian versions refer to Art. 150, *ante*, for the method of ascertaining the amount of freight.

212. The following do not contribute to General Average—

- (1.) Ship's provisions, bunker coals, and other engine-room stores, as well as ship's military stores.
- (2.) Master's and crew's wages.
- (3.) The clothes and travelling requisites belonging to persons on board and whatever they have about them.

If such objects as are mentioned in No. 3 have been sacrificed or damaged by a General Average act the owner nevertheless participates in the distribution to the amount allowed for them in the Average adjustment.

See Art. 190 (1), *ante*.

G. 725, H. 731, I. 648, P. 639, §2, S. 856.

213. The adjustment and apportionment of General Average takes place at the *port where ship and cargo separate, and in conformity with the laws of the country where such separation takes place. In this country the adjustment is made by sworn Average-staters. * If any dispute arises concerning the correctness of the statement, the questions at issue have to be referred to the decision of the Court.

G. 729, H. 711, 722, 723, 725, I. 658, P. 650-652, S. 846.

214. It is the master's duty as soon as possible to see that the requisite steps are taken to have the Average adjusted, and every person concerned is bound to provide the Average-stater with all such information and documents as he may consider necessary.†

G. 730, 731, H. 724, I. 657, 658, P. 652, S. 851, 852.

* The Swedish version provides for a local custom not to settle at the actual port but in a larger one in the neighbourhood, and the last sentence as to judicial proceedings is omitted, being covered by the general laws, and see Arts. 326, 329, *post*.

† The Swedish version contains the following provisions in addition, and makes provision for any interested party having the Average adjusted if the Captain

215. If goods are entered in the Average statement as lost, and such goods are afterwards recovered, or if any damage has been entered therein which afterwards has been made good by the person causing the damage, the Average statement has to be amended by a supplementary statement. The drawing up of the Average statement must not, however, be retarded by a prospect that may exist of recovering the objects sacrificed or obtaining compensation for the damage.

G. 722, H. 739, 740, I. 653, P. 646, S. 863.

216. The liability of the owner of goods subject to a General Average contribution is limited to the goods themselves, and is not personal.

See Arts. 268 (3), 274 (2).

G. 727, 728, H. 738, I. 671 (6), 673 (4), 675 (8), S. 867, 868, 951.

217. A ship under liability for General Average contribution must not leave the port where ship and cargo separate, and goods liable to such contribution must not be given up to their owners before such contribution has

fails to do so:—"It shall be the duty of the Adjuster, whenever a request for an adjustment of Average is made, to summon as soon as possible, by a notice inserted in the Official Gazette and in a local paper, all persons, who claim to participate in the Average, to state in writing, within a certain prescribed time, what evidence they propose to adduce in support of their claim, and to send in to him any documents to which they wish to refer. If any of the documents delivered are found incomplete the Adjuster should, as soon as possible, request the respective party to furnish the necessary information. When the time prescribed in the notice expires, or, if no complete documents have been delivered in by the time appointed, then when they are all delivered, it shall be the duty of the Adjuster to have the Average statement drawn up in duplicate within two months, and on a day of which notice must be given, posted up in the Town Court, and advertised in the Official Gazette and in one of the Local Papers; the said statement must be endorsed with a notice indicating the time, within which any person, dissatisfied with the adjustment, can have the case brought before the Courts in order to preserve his right of action. Of the two copies one shall be delivered to the person who has requested the adjustment, the other shall be kept by the Adjuster for exhibition to the other persons interested in the Average."

been paid, or, if the amount has not been fixed, security has been given for it.

G. 732, 733, I. 659, 675 (8), P. 653, S. 867, 868, 951.

218. All damage sustained by either ship or cargo and all expenses subsequently incurred which have been caused and rendered necessary by an accident not classified as General Average, are classed as Particular Average, to be borne by the object or objects which sustained the damages, or for whose account the expenses were incurred, as laid down in Art. 161.

If expenses which are classed as Particular Average were incurred at the same time and without distinction, for the benefit of ship and cargo collectively, or for several parts of the cargo, such expenses have to be divided in an equitable proportion between the values, for whose benefit they were employed and distributed over them, as far as possible in conformity with the rules laid down for General Average distribution. Expenses incurred by salvage of the cargo have to be borne proportionately by the cargo and the freight of the goods saved. Anyone interested in such Average may claim to have the adjustment and distribution made by a regular Average-stater.

G. 703, I. 643.

F. W. RAIKES.

III.—DR. TRISTRAM ON REMARRIAGE OF DIVORCED PERSONS.

AT a sitting of the Consistory Court, held on May 3rd, in the Wellington Chapel, St. Paul's, London, Dr. Tristram, Chancellor of the Diocese of London, made a statement in reference to his recent action in granting a certain marriage licence. It will be remembered that Mr. Theodore Brinckman, son of Sir Theodore Brinckman, Bart., had obtained a licence for his marriage with Miss Linton, the stepdaughter of Lord Aylesford, at St. Mark's Church, North Audley Street, and that upon the circumstances becoming known certain members of the English Church Union decided that an attempt should be made to stop the ceremony. The ground for this action was based, it is alleged, upon the fact that in July, 1894, Mrs. Brinckman filed a petition for divorce against her husband, which he did not defend, and the Divorce Court granted a decree nisi, which was not made absolute until January of the present year. Shortly afterwards the engagement of the respondent to Miss Linton was made public, and forthwith a number of well-known Churchmen petitioned the Bishop of London to stop the wedding being held in a consecrated church. To that petition and subsequent appeals the Bishop of London declined to reply. At the ceremony, which was considerably interrupted, Father Black read a formal protest, embodying the reasons upon which the marriage was objected to.

Dr. Tristram, the Chancellor of the Diocese of London, now explained the circumstances under which he had acted in this and similar cases. He said:—

“On April 23rd, an application was made to me, sitting as Judge in Chambers, by Mr. Brinckman, who had been a respondent in a divorce case, to order a licence to issue for the celebration of his marriage in St. Mark's Church, North

Audley Street. Upon his producing a certified copy of the decree dissolving his previous marriage, and upon his satisfying me upon oath that there was no legal impediment to the marriage under the decree or otherwise, and upon his naming the Rev. Dr. Ker Gray as a clergyman willing to officiate at the marriage, I ordered the licence to issue for its celebration by him in the church named, being of opinion that by law I was bound to grant the licence. In consequence of the protest made during its celebration, and an impression abroad that the Bishop of London was in some way responsible for the issue of the licence, I feel it to be my duty to state in Court the grounds upon which these licences have been granted by me, as Chancellor of London, for the last 22 years, without any attempts having been made to question my right and duty to do so by appeal or by moving for a prohibition. The question of my right and duty to do so was raised and abandoned in May, 1873, in '*Ex parte Mayne.*' In that case an application was made, as I find on referring to my notes, for a licence for the celebration of the marriage of a guilty party in a divorce suit. Previously to the application, the late Bishop of London had lodged in the registry 'an order directing that in future no licence for the marriage of divorced persons should issue.' I was informed of this by the proctor who applied for the licence, and who intimated to me that he should contend that the order was *ultra vires*, and that if I held that it was binding on me, as Chancellor, he should contest its validity by *mandamus*. I communicated with the Bishop, who informed me that similar orders had been issued by several of the bishops, and that his wish was that such directions should be enforced, provided he was entitled by law to make the order. After much research and consideration, I came to the conclusion that the order was *ultra vires*, and that I was bound by law to grant the licence. The English Church Union, by their proctor,

entered a *caveat* against its being granted. I ordered the application to be made in Court, and directed notice of the holding of the Court to be given to the opposing proctor. On the case coming on I was informed that the opposition to it had been abandoned, and I thereupon granted the licence, stating shortly the grounds on which I held that it ought to issue. The first question I had to consider was whether or not the Bishop's order was *ultra vires*. This would depend upon the terms of the letters patent by which his Lordship had appointed me Chancellor of London. By my letters patent the Bishop 'deputed and authorized me to do and execute the power and authority of him and his successors in all matters and things which do and shall belong to the office of Vicar-General in Spiritualities and Official Principal of the City and Diocese of London;' and, amongst other things, he 'deputed and authorized me to grant marriage licences and all other canonical dispensations whatsoever for him and his successors which have been used and accustomed to be done by the laws, customs, canons, and statutes of this Kingdom of Great Britain.' The letters patent contain certain reservations in favour of the Bishop, but they do not reserve to him the power to issue orders interfering with the mode in which his Judge shall administer justice in the Bishop's Court. The contrary was held in an old case in which the Bishop of Lincoln had sued for a legacy in his own Consistory Court. Prohibition was moved for against his Chancellor on the ground that the Bishop could not sue in his own Court in a matter in which he was pecuniarily interested. The King's Bench refused a prohibition on the ground that a bishop could not interfere with or control his Chancellor in the exercise of judicial functions vested in him by his letters patent, and, therefore, there was no reason why he should not sue there. In determining whether a licence shall or shall not issue, it is

the duty of the Chancellor to decide the question judicially, and from his decision there is an appeal to the Provincial Court and from thence to the Judicial Committee. I, therefore, held that the Bishop's order was *ultra vires*, and that it was not competent to me to give effect to it. The next question I had to consider was whether by the practice of the Court prior to the passing of the Divorce Act a licence would issue for the marriage of a person whose marriage had been dissolved by Act of Parliament. By my letters patent I was directed to grant marriage 'licences which had been used and accustomed to be done by the law, customs, canons, and statutes of the kingdom of Great Britain.' The practice of granting licences for marriages in England was coeval with the introduction of publication of banns. By the early English Canon law the publication of banns or a marriage licence was a condition precedent to the celebration of a regular marriage *in facie ecclesiæ* (see Canon 8 of the Westminster Canons, A.D. 1200; Johnson's *English Canons*, Part II.). Prior to the Reformation a marriage in this country being held to be a sacrament, the Ecclesiastical Courts had no jurisdiction to dissolve it. For some 40 years after the Reformation it was held by the ecclesiastical lawyers that, it being no longer deemed to be a sacrament, it was competent for these Courts to dissolve it. But the Star Chamber early in the reign of James I. ruled the contrary. This decision led to the introduction of the practice of divorce by Act of Parliament. It was, therefore, of importance to ascertain whether it had been the practice for the Judges of this Court to issue licences for the marriage of persons whose marriage had been dissolved by Act of Parliament. I accordingly inquired of the Registrar of the Court, the late Mr. John Shephard, who was acting Registrar for 50 years and who had succeeded his father, who had also held the same office for 50 years and upwards, what had been the practice of the

Court during his and, to the best of his information, during his father's tenure of the office. He informed me that it had been the invariable practice of the Judges of this Court during their tenure of office, prior to the Divorce Act—namely, Sir William Wynne, Lord Stowell (who presided in this Court for 30 years), Sir Christopher Robinson, and Dr. Lushington—to grant licences for the marriage of persons whose marriage had been dissolved by Act of Parliament, or by a foreign Court of competent jurisdiction, on being satisfied by evidence of the validity of the decree of such Court, whether the persons were innocent or guilty parties to the divorce; and that from the time of the Divorce Act coming into operation up to my appointment as Chancellor in 1872 Dr. Lushington and Sir Travers Twiss had followed the same practice in regard to parties whose marriage had been dissolved by a decree of the Divorce Court. I accepted the action of these distinguished Judges as binding on me on the question of practice. The canons of 1603 contain references to divorces *a mensa et thoro*, but none to marriages dissolved by competent authority. The first Ecclesiastical Marriage Act (Lord Hardwicke's Act of 1753) recognizes the right of the Ordinary to grant marriage licences, but contains no regulations respecting the mode of granting them. The present Marriage Act, 4 and 5 Geo. IV., cap. 76, prohibits any Surrogate from granting a marriage licence unless he is satisfied on the oath of one of the parties that there is no lawful impediment to the solemnization of the marriage. At the time of the passing of the Divorce Act the state of the law on this question was that by the practice of this Court licences were issued to parties whose marriage had been lawfully dissolved, whether they were innocent or guilty. By the Divorce Act the guilty party is entitled to be married in a church according to the rights of the Church, provided he finds a clergyman willing to celebrate the marriage. A guilty

party can only be married by banns or licence. Had the Legislature intended to deprive him of his right to be married by licence it would have said so. I have been informed that it is not unusual for divorced persons to be married by banns. Why should they not be married by licence? In the case of '*Ex parte Mayne*' I decreed the licence to issue, and informed the late Bishop of London that I had done so, giving his lordship my reasons for so doing. But I told his lordship that it appeared to me to be advisable that this question should be then settled once and for all, and that to facilitate its settlement I was prepared to be a party to a special case to be stated in the Court of Queen's Bench, and to instruct counsel to support my decision at the hearing of the case. His lordship, after taking very competent advice on the subject, informed me that after my well-considered decision on the point he should take no further steps in the matter. It only remains for me to make observation on one point raised by the objector to this marriage. He would seem to be under the impression that he was justified in objecting to its celebration, although it was authorized to be celebrated by licence under the words of the rubric referred to by him. The rubrics contain no mention of marriage by licence, and for this reason—the right for the Ordinary to grant marriage licences by the Canon law was reserved to Ordinaries by 25 Henry VIII., c. 21, sect. 15, an Act still in force, and there was, therefore, no occasion to make any provision by the rubrics relating to licences. The practice as to the celebration of marriages by banns was first recognized by the Acts of Uniformity, and the right to object openly in a church to a marriage under this Act is limited to a case of a marriage by banns. It has been held that a marriage licence is equivalent to an authority and order on the minister to celebrate the marriage, and that he is bound to do so unless information has come to him that there is a

legal impediment to the marriage which he has reason to believe was unknown to the official when he issued the licence, and then he may defer its celebration to enable him to bring the impediment to the notice of the Ordinary. The objector to a marriage by licence should therefore either communicate his objection to the Chancellor through the Registry or to the minister of the parish in order that he may do so. He is not warranted under the rubric in objecting to it openly in church, and for so doing in my judgment he is guilty of brawling."

It is interesting to note that Sir Richard Webster has taken an opposite view to that entertained by Dr. Tristram, and denies the inability of Bishops to restrain their chancellors from issuing marriage licences; if this view be correct, of course there is no necessity for further legislation, even on the part of the most stalwart supporters of the English Church Union.

Meanwhile a man dear to that party, Lord Halifax, introduced into the House of Lords, in the early days of May last, a Bill, entitled "An Act to amend the Matrimonial Causes Act, 1857, and the Law relating to the Marriage of Divorced Persons." This Bill, should it pass into law, will repeal sect. 58 of the Matrimonial Causes Act, 1857, and modify the existing law, by enacting that "No minister of any church or chapel of the Church of England, wherein marriages may be lawfully solemnised, shall be liable to any suit, penalty, or censure for refusing to permit the marriage of any person whose former marriage shall have been dissolved on the ground of his or her adultery or crime to be solemnised in such church or chapel, or for refusing to proclaim or permit the proclamation of banns of marriage of any such person in such church or chapel." In Committee, the following clause stands in the name of Lord Grimthorpe, in substitution of the above proposed enactment. The amendment is: "No marriage of a person

found guilty of adultery by any Court in the United Kingdom, which has power to grant divorces or judicial separation for that cause, shall be solemnised in any church or chapel of the Church of England within five years after such conviction."

The whole subject teems with difficulty. It is a conflict between Church and State. According to the Canon Law a marriage is dissoluble *à vinculo* on account of precontract, consanguinity, affinity, impuberty, or frigidity; but it is to be observed that in all these cases the marriage is void *ab initio*, by reason of incapacity arising through matter precedent to the marriage and the sentence of divorce in such cases is only declaratory. The marriage dissolved by the sentence of the Bishops Court is in reality absolutely void before such sentence; either of the parties might in fact marry again, although the other be living. The sentence is purely declaratory of an existing incapacity, although called a divorce *à vinculo matrimonii*. But in cases of adultery the Church only divorces *a mensa et thoro*, that is separation from bed and board; there is no dissolution of the marriage tie. In the famous case of the Marchioness of Northampton, being convicted of adultery, the Marquis was divorced from her in the beginning of the reign of Edward VI.; thereupon a commission was granted, and directed to Archbishop Cranmer and to nine other divines to certify whether she continued to be the wife of the Marquis, notwithstanding the divorce *a mensa et thoro*; and whether, according to the Word of God, he might marry another wife. Before this matter was determined, the Marquis married again; this gave great offence to the Privy Council, who deemed the first marriage to be the true one, and to continue notwithstanding the separation *a mensa et thoro*. The Marquis, however, insisted that the very bond or *vinculum* of marriage was dissolved by his wife's adultery, that marriage in early days was always dissoluble until the

Church of Rome had made it a sacrament, that it would be very inconvenient if marriage were not dissolved by adultery, because then the innocent person might live with the guilty or be tempted to commit the like sin. The delegates gave their judgment in favour of the second marriage, founding their opinion upon the definition of Christ concerning marriage, viz., that *two should be in one flesh*; so that when that was divided, as it must be by adultery, the marriage itself is dissolved; that St. Paul speaking of an unbeliever departing from his wife, tells us that in such a case the believing party is not under bondage, which they considered to be an intimation that the bond is dissolved by the mere act of him forsaking his wife, and if so the bond *à fortiori* must be dissolved by adultery.

This sentence of the Delegates was, about four years after, viz., 1552, confirmed by a private Act of Parliament, which, it may amuse our readers to know, was repealed the following year, the reason mentioned in the preamble of the repealing Act being that the private Act was "an encouragement for licentious persons to procure divorces upon false allegations."

The spirit of the whole Christian Church has, with rare exceptions,* ever been in favour of maintaining the marriage tie *coute que coute*, notwithstanding the adultery of one of the parties. This is the spirit of the Church of England at the present day, but the position is continually assailed by the action of the Law as carried out in the temporal Courts. Possibly a relegation of the second

* It is noteworthy that Theodore, Archbishop of Canterbury, who, in the seventh century, wrote his Penitential, appears to favour the remarriage of the innocent person after a divorce from the guilty party for adultery. He says (*Liber Penitentialis*, sect. 18): "Mulier si adulterata est, et vir ejus non vult habitare cum ea, dimittere eam potest juxta sententiam Domini, et aliam ducere." But Haddan & Stubbs, recent commentators on the Penitential, do not adopt this reading (*Councils, &c., of Great Britain*, Vol. iii., p. 199).

marriages of divorced persons to the civil tribunal of the Registrar, without bell, book, or blessing, may be a solution to the difficulty. Certainly it would relieve Christian ministers from a difficult and embarrassing responsibility.

NEMO.

IV.—AN ARTISTIC FORM FOR THE ENGLISH LAW.

"SCIENCE" has been defined as "a collection of truths;" "art" as "a collection of rules." The question whether English Law is scientific in the sense of the above definition depends for its answer upon ethical considerations with which this paper has no concern. By means of the processes of abstraction and induction, the lawyer has to evolve from previous decisions and enactments, a rule applicable to the case before him; therefore that English Law should be artistic in the sense above is also of no concern to him as lawyer, *i.e.*, one who has to practise and work the Law, except in respect to its expression and statement in fit terms, by which it will be more easily ascertained by him. "The law does not consist of particular cases, but of general principles, which are explained and illustrated by those cases" (Lord Mansfield), and, according to Sir James Stephen, in his Introduction to his *Digest of the Law of Evidence* (2nd Edition, p. xvi.), "Legislation proper is, under favourable conditions, the best way of making the Law; but, if that is not to be had, indirect legislation, the influence on the Law of Judges and legal writers, who deduce, from a mass of precedents, such principles and rules as appear to them to be suggested by the great bulk of the authorities, and to be in themselves rational and convenient, is very

much better than none at all." "In our own days it appears to me," continues the learned Judge, "that the true *fontes* are not to be found in reported cases, but in the rules and principles which such cases imply, and that the cases themselves are the *rivuli*, the following of which is a *dispendium*" (loss of time). And he adds that his attempt in that work had been emphatically *petere fontes*, to reduce an important branch of the law to the form of a connected system of intelligible rules and principles. Again, in the Introduction to the *Digest of the Criminal Law*, he writes of the leading treatises of the Criminal Law that "they have both the merits and defects of English law-books in a conspicuous degree. They represent the result of an immense quantity of patient research and of a minutely laborious and generally singularly accurate application of learning to a very unattractive subject, but they make no pretensions to any other merit," and states that "The comparative brevity of the work has been obtained by the double process of extracting principles from cases, the facts being stated in the form of illustrations of the principles, and condensing the statutes." Mr. Frederic Harrison once applied the epithet of a "tractless wilderness" to Story's *Conflict of Laws*, than which no other work is more frequently referred to upon the subjects to which it relates.

"The law itself, as expounded by Coke and Blackstone, except so far as it has been deduced with much logical punctiliousness from the theory of feudal tenure, is little more than a collection of isolated rules, strung together, if at all, only by some slender thread of analogy" (Holland, *Elements of Jurisprudence*, preface to the first Edition).

The foregoing remarks lead to a short consideration of the question how far the rules, which Sir J. Stephen considers advisable, have been adopted in legal compilations before or since his remarks were written. The Indian

Penal Code and Evidence Act, Hunter's *Roman Law*, the Code Napoleon, Westlake and Dicey's works upon *Private International Law*, Farwell's *Concise Treatises on the Law of Powers*, the Bills of Exchange Act, 1882, and possibly the Sale of Goods Act, 1893, seem to supply the chief instances of their application in a greater or less degree. Most of the standard legal so-called text-books upon English Law are only slightly less voluminous than the reports of the cases their writers have endeavoured to epitomize, that is to say, they aim not at giving so much the rules of Law extracted from Reported cases, as to bring together in one list all the cases relative to the subject of the treatise, *e.g.*, Chitty on *Contracts*, Addison on *Torts*, and Story's *Equity Jurisprudence*. As the late Mr. Joshua Williams wrote (*Elements of the Law of Real Property*, 7th Edit.; p. 17), history and antiquities are no doubt delightful studies in their proper place; but their perpetual intrusion into modern practice leads to many errors on the part of the younger students of English Law. In the same way, placing before the reader the facts of numerous old decisions without a clear statement of their *ratio decidendi* will inevitably tend to confuse the clearness of the impression of the peruser as to what is the exact rule of Law upon the subject under consideration. Whether an arrangement of legislative enactments and legal treatises upon the lines of Sir J. Stephen's *Digest* and Farwell on *Powers* would obviate the dangers to which Mr. Williams alluded may be questioned. The above learned Judge himself pointed out the objection, which is felt in some quarters, to adding cases by way of illustration to the provisions of Acts of Parliament. Probably much might be done in this direction in those branches of Law which like the Criminal branch of Public Law may now be said to be divided upon recognised principles, and to possess a terminology, though a somewhat

loose one, of their own (Holland, *Jur.*, 330, 6th Ed.). With regard to the legal works now in use, "Leading Cases" seem to be the most undesirable from Sir James Stephen's point of view.

The late Judge, by his *Digest* of the Law of Evidence, and the Criminal Law, may be said to have shewn the possibility of expressing English Law in a concise and comprehensive form, and there are signs that he will not lack imitators in his endeavours to recast English Law in an artistic form in the sense of the above remarks.

W. P. PAIN.

V.—CURRENT NOTES ON INTERNATIONAL LAW.

Public International Law.

China and Japan.

The full text of the recent Treaty of Shimonoseki has now been published in the form of a Parliamentary paper.* The general effect has been indicated in a previous issue, but some further details will doubtless be of interest to students of International Law.

By Article 1: "China recognises the full and complete independence and autonomy of Corea, and, in consequence, the payment of tribute and the performance of ceremonies and formalities by Corea to China in derogation of such independence and autonomy shall wholly cease for the future."

By Article 2: "China cedes to Japan in perpetuity and full sovereignty," certain territories including (1) the province of Feng-tien, (2) the Island of Formosa, and (3) the Pescadores Group of Islands. The first of these has

* Japan, No. 1 (1895), C. 7,714.

been practically agreed to be abandoned by Japan in deference to the protest of the European Powers.

By Articles 3 and 4: A Commission for delimitation of boundaries and an Indemnity are provided for.

By Article 5: It is agreed that "the inhabitants of the territories ceded to Japan who wish to take up their residences outside the ceded districts shall be at liberty to sell their real property and retire." At the expiration of two years, "those of the inhabitants who shall not have left such territories, shall, at the option of Japan, be deemed to be Japanese subjects."

By Article 6: Provision is made for the extension of facilities for Trade with China; the details, however, have no legal interest beyond the opening recital to the effect that "all Treaties between Japan and China having come to an end in consequence of war," a new Treaty of Commerce and Navigation shall forthwith be entered into.

This recital must presumably be taken to represent a statement of fact in the particular circumstances of the case, and not as expressing the general principle applicable to such cases. As regards the general effect of War on Treaties, and the cases in which the latter are unaffected by a state of Belligerency, see Baker's *Halleck*, 3rd edition, I., p. 294; Kent, *Com. on Amer. Law*, I., 177; Wharton's *Digest*, § 135; the usual text-books, especially Hall, and see *Sutton v. Sutton*, 1 R. & M. 663.

The rest of the Treaty merely provides for the limited occupation of certain territory by Japan as security for the due payment of the War Indemnity. Article 9, however, deserves special mention as recalling the days when "ancient barbarous uses" rendered such stipulations necessary. It provides that all prisoners of war are to be restored, and "China undertakes not to ill-treat or punish prisoners of war so restored to her by Japan. China also engages at once to release all Japanese subjects accused

"of being military spies or charged with any other military offences," and "further not to punish in any manner, or allow to be punished, those Chinese subjects who have in any manner been compromised in their relations with the Japanese army during the war."

By one of the "Separate Articles" it is agreed that the civil administration of the "occupied Territory" shall remain in the hands of the Chinese authorities subject to any orders which the Commander of the Japanese army may find it necessary to give "in the interest of the health, maintenance, safety, distribution, or discipline of the troops."

* * *

North Pacific Seal Fisheries.

Some interesting correspondence has recently been published respecting the agreement with Russia relative to the Seal Fisheries in the North Pacific.*

The Provisional Agreement upon the subject entered into in May, 1893, by our own and the Russian Government expired on the 1st January, 1895, and after some negotiations, a prolongation of the arrangement was agreed to on the understanding that the Russian Government should obtain the consent of the Government of the United States to the application of similar restrictions to the sealing vessels of the Republic. This consent appears to have been obtained. The effect of the arrangement is to create a "protective zone" of 30 miles "around the Komandorsky Islands in the North Pacific Ocean and Tullnew Island or Robben Reef in the Okhotsk Sea; also a protective zone of 10 miles along the shores of the Russian mainland." All sealers found within these limits are liable to seizure by Her Majesty's ships or those of the Russian Government.

* Russia, No. 1 (1895), C. 7.713.

It will be remembered that a similar Treaty right of Visitation and Search in time of peace is also conceded within altered limits of territory by the Treaty made between this country and the United States in pursuance of the Behring Sea Arbitration.

The Correspondence also deals with the alleged wrongful seizure, by Russian warships, of British sealers, including the *Rosie Olsen*, *Willie McGowan*, *Ariel*, *Vancouver Belle*, *Marie*, and other vessels. These seizures occurred in 1892, before the agreement above alluded to. It was pointed out by our Government that, apart from Treaty, such seizures outside Russian territorial limits were of course illegal, and that British ships were not concerned to obey the provisions of Russian Laws purporting to affect proceedings on the High Seas. The Russian Government practically admitted that the seizures of the *Ariel* and *Willie McGowan* were unjustifiable, and presumably some compensation will be paid in respect of these acts. As regards the other vessels, the documentary evidence relative to the seizures has been handed over to the British Government, and negotiations upon the subject are still pending.

* * *

Private International Law.

Divorce Jurisdiction.

A most important decision was given by the Judicial Committee of the Privy Council in the very recent case of *Le Mesurier v. Le Mesurier* (*Times L.R.*, Vol. XI., p. 481). The facts were simple. The petitioner, a Ceylon Civil Servant, married the respondent, a French lady, in England in 1883. His domicile of origin was English, and though he subsequently resided in Ceylon, he retained this domicile. In 1892 he petitioned the District Court of Matara for a decree of Divorce from his wife for various

acts of adultery alleged to have been committed in Ceylon and elsewhere.

The District Court granted a decree *nisi*, but this was reversed by the Supreme Court of Ceylon on the ground, amongst others, that the Cingalese Courts had no jurisdiction in the matter, the parties being merely resident, and not domiciled in the Colony.

On appeal to the Privy Council, this decision was sustained, Lord Watson, on behalf of the Court, reviewing the whole law upon the subject in a very elaborate judgment. The Judicial Committee declared (a) that the Law *primâ facie* prevailing in Ceylon, was the Roman-Dutch Law which prevailed in the Colony before annexation, (b) that "in order to sustain the competency of the present suit it was necessary for the appellant to show that the jurisdiction assumed by the District Court was derived either from some recognised principle of the general law of nations or some domestic rule of Roman-Dutch Law," (c) that there was no rule of Roman-Dutch Law properly applicable, and (d) that "according to International Law the domicile for the time being of the married pair is afforded the only true test of jurisdiction to dissolve the marriage."

The Court reviewed a long line of authorities which have been regarded by writers on International Law as to some extent declaring that *bonâ fide* residence of both parties, or of the husband alone, or the "matrimonial domicile" of the parties is sufficient to afford jurisdiction without actual domicile. The cases examined included *Tollemache v. Tollemache*, 1 S. and T. 557; *Yelverton v. Yelverton*, 1 S. and T. 574; *Brodie v. Brodie*, 2 S. and T. 259; *Manning v. Manning*, 2 P. and D. 223; *Wilson v. Wilson*, 2 P. and M. 435; *Niboyet v. Niboyet*, 4 P.D. 1; *Pitt v. Pitt*, 4 Macq. Ap. Cas. 627; *Wilson v. Wilson*, 10 Sess. Ca., 3rd Ser., 573. The Court finally adopted the view of Lord

Penzance in *Wilson v. Wilson*, 2 P. and M. 442: that domicile should be the sole test of jurisdiction.

It should be remarked that the Court did not deal with the extreme cases, such as *Deck v. Deck*, 29 L.J. P. and M. 129; *Santa Teodoro v. Santa Teodoro*, 5 P.D. 79 (but distinguish *Le Sueur v. Le Sueur*, 1 P.D. 139), in which the bona residence of the wife alone was held under the circumstances, to be a ground for the English Courts to exercise its jurisdiction.

With reference, however, to all the above authorities, it is to be observed that the principle of jurisdiction based on residence or "matrimonial home," has not been so clearly recognised with regard to foreign or colonial divorces as to divorces in our own Courts. (See the *dicta* in *Briggs v. Briggs*, 5 P.D. 163—and the remarks of Selborne, L.C., in *Harvey v. Farnie*, 8 A.P. Cas., p. 56, and of Cotton, L.J., in the same case, 6 P.D., pp. 50 and 51.) It has long been a source of doubt and difficulty as to the exact conditions recognised by our Courts as a basis of jurisdiction to dissolve English marriages by proceedings instituted (a) abroad and (b) in our own Courts. The use of such vague terms and ideas as "*bonâ fide* residence," "resident not casually or as a traveller," "matrimonial domicile," and "matrimonial home," has greatly tended to confuse the law upon the subject.

It is remarkable that one of the cases most offending in this respect, *i.e.*, *Hurley v. Hurley*, 69 L.T.R. 384, was not apparently brought to the notice of the Judicial Committee. In that case, curiously enough, the petitioner was a Ceylon Civil Servant, but he was admittedly domiciled in Ceylon, and the English Court assumed jurisdiction to grant a decree *nisi* on the ground of his intention that the "*matrimonial home*" or "the home of his wife and children" should be in England. As a matter of fact the findings of the jury really amounted in Law to a declaration that the

actual domicile of the petitioner was English; but the judgment of *Butt, P.*, was based on a contrary assumption.*

The question as to what is the practical outcome of the recent decision of the Privy Council is of great importance. Although the case was one of Colonial divorce, and not actually a question of English Jurisdiction, it would certainly appear that the result is to entirely over-ride, in all cases, every basis of Divorce Jurisdiction except *Domicile*; and apparently the "domicile of the married pair," *i.e.*, of both parties. This latter point may again cause difficulty unless it is regarded as clearly established that a wife's domicile is in *every* case that of her husband. See *Westlake*, § 253, and especially note Lord Cranworth's view in *Dolphin v. Robins*, 7 H.L.C. 419; and see as to this Dicey on *Domicile*, p. 104-105.

It is a tribute to the last mentioned writer's discernment, that the Privy Council should have so fully upheld his view of the decision in *Niboyet v. Niboyet* as being "one which" "may more easily be justified by the exceptional circumstances of the case, than on the general principles on which it is supposed to rest." (See Dicey on *Domicile*, p. 225, *et seq.*, and Appendix, Note 10, p. 361.)

JOHN M. GOVER.

* Note also the anomalous case of *Ingham v. Sachs*, 56 L.T. 920, the decision in which, however, seems to have been given under a total misapprehension of the facts as to the husband's domicile.

VI.—NOTES ON RECENT CASES (ENGLISH).

Tenants' Covenants and Annoyances by Music and Singing.

DISPUTES between landlords and tenants are as common as the sands of the sea shore, but the points raised as to a residential covenant in *Eyre and Webster v. Fuller and Landi* are of more than usual interest. The plaintiffs, as owners of the Eyre Estate, Hampstead, being lessors of a house, number 30, Springfield Road, Hampstead, of which the defendant, Mrs. Fuller, was a lessee, and of which the defendants, Signor and Madame Landi, were the under lessees and occupiers, sought for an injunction to restrain the defendants, until the trial of the action, from so using the house as to cause an annoyance or grievance to the occupiers of other houses in the road in infringement of the covenants in the lease. The defendant, Madame Landi, was an Italian lady, who taught singing. The houses of the plaintiff and defendant were adjoining semi-detached leasehold villas, divided by the usual party wall. The leases contained covenants binding on the occupiers of the houses not to carry on any trade or business or do any act which might be an annoyance or nuisance to any occupier of an adjoining or neighbouring tenement. Complaint was made of the annoyance and disturbance caused by the singing lessons and scale practising, and clapping of hands and expressions of applause. The case came before Mr. Justice Chitty, who held that the covenant as to not causing annoyance was plainly binding on the defendants. There were sometimes two pianos—one a grand—playing at the same time on the defendant's premises, but, of course, not the same music, and there was continuous practising and scale singing. He was satisfied that there was a disturbance of the comfort

of a person ordinarily constituted. Those who took part in a musical performance might not be sensible of any disturbance caused by it. The case, however, was very different where a person was forced to listen. The position of the parties was totally different. The continuity of the noise was also greatly to be considered. In a covenant of this kind the word annoyance had been deemed to have a wider meaning than nuisance, and had been held to include anything which interfered with the pleasurable enjoyment of the house, although not amounting to physical detriment to comfort—*Tod-Heatly v. Benham*. To make a noise voluntarily and to be obliged to listen to it were two different things. The defendants were no doubt engaged in getting an honest living, but it was his duty to grant an injunction. In view of this case the point arises what difference is there between an “annoyance” and a “nuisance.” The latter word is often used as synonymous with the former; but, legally, there is a distinction. Leases of residential properties frequently have covenants by the lessee not to do or suffer anything which may be a nuisance or annoyance to occupiers of neighbouring premises. The word nuisance has a somewhat restricted meaning, and as various acts were held to be permissible as not amounting to actionable nuisances, it was requisite to enlarge the language of these covenants so as to afford more protection to the lessor. In the foregoing case the covenant was not to do any act which might be an annoyance, &c., to any occupier of an adjoining or neighbouring tenement, and the breach of the covenant was alleged to consist in constant piano playing. Of course this kind of nuisance would be hard to establish, but the covenant fortunately obtained the word “annoyance.” The case of *Tod-Heatly v. Benham* (the *Jubilee Hospital* case) being quoted, Mr. Justice Chitty gave a wider meaning to the word “annoyance,” and held it “to include anything which interfered with

the pleasurable enjoyment of the house, although not amounting to physical detriment to comfort." Here there had been such an annoyance as came within the language of the covenant, and therefore the injunction issued. The decision in *Tod-Heatly v. Benham*, it will be remembered, was firstly to the effect that the words "neighbouring houses" were not to be confined to houses on the lessor's own estate; and secondly that in order to enforce such a covenant actual damage or pecuniary loss was not required to be shewn as having been sustained.

* * *

One Man Companies.

Though there were always one man companies practically owned by one man, the decision which was adverse to them both in the Divisional Court and the Court of Appeal in the case of *Broderip v. Salomon & Co.* was none the less important. The Company was formed in August, 1892, with a nominal capital of £40,000 in £1 shares to take over the business of a leather merchant and wholesale and export boot manufacturer and Government contractor, carried on by the defendant, but the only shares issued were £20,000 to the vendor and one each to his wife and daughter and four sons, who signed with him the memorandum of association. At the date of the transfer the accounts of the business shewed a considerable excess of assets over liabilities. The Company was, however, subsequently wound up, and then steps were taken to impeach the validity of the debentures and to compel the refunding of the £29,000 received from the Company. The Court of Appeal, affirming the Divisional Court, came to the conclusion that the agreement of transfer of the business to the Company and the issue of debentures to defendant was a mere sham to enable him to carry on business with limited liability, and to enable him to obtain

preference over other creditors and give him a first charge on the assets, and the appeal was dismissed. The statutes, it was pointed out, were not intended to legalise a pretended association for the purpose of enabling an individual to carry on his own business with limited liability in the name of a joint stock company. This decision has already borne fruit in another case where a winding-up order has been made against the London and Continental Bank and Exchange, Limited. There it appeared that the total assets amounted to £4,736, as against unsecured liabilities of £16,576, and debentures £8,000, but the vendor and his family offered to abandon their claims both as debenture-holders and as unsecured creditors. The effect of this offer reduced the unsecured creditors' claims to £3,800, and released the assets so that the creditors would probably be paid in full. No doubt this result is owing to the foregoing important decision. It was out of an argument in one of these cases that the following story arises :—Two companies claimed possession of the assets of another concern which had reached the stage of liquidation. The claim of both companies was contested on the ground that they were bogus concerns, and one eminent Q.C., nettled by the assertion that his company consisted of three shareholders only, retorted rather warmly that his opponents' consisted only of two. But his learned friend was quite equal to the emergency. "I would point out, my lord," he said, "that it is a well understood thing that while two are company three are none." He got the verdict.

* * *

Clerks and Dissolution of Partnership.

The following case is instructive as shewing that the possession of a bare legal right may not be always worth asserting :—When on dissolution of a firm the servants are

dismissed, if a proper notice of dismissal is not given to such servants, they are wrongfully dismissed and have a claim for damages. This is the result of the case of *Brace v. Calder and Others*, before a Divisional Court, where it appeared a clerk was employed by a firm of three partners for a fixed time. Before that time the firm was dissolved, and the business was carried on thenceforth by two partners only, who offered the clerk employment on the same terms, but he refused and brought this action. The Court considered that the maximum damages obtainable would be the amount of salary which would have been earned had the employment been continued during a time corresponding to the length of notice to which the discharged servant was entitled. But from this would have to be deducted the amount which the servant earned during the period in question, or which, but for his own default, he might have earned. The damages awarded here were therefore nominal. This case is likewise of interest both to master and servant as regards contracts of service with partners. The plaintiff, it was clear, was employed by a firm to act as their agent for a certain period, but before the expiration of the time fixed there was a dissolution by retirement of some of the partners and the remaining ones offered to continue the plaintiff's employment on the same terms as before, for the rest of the period. This he refused and brought this action for wrongful dismissal. The Court of Appeal's view was that the dissolution of the partnership operated as a wrongful dismissal and, therefore, the plaintiff was entitled to damages. As, however, the plaintiff would not have suffered by accepting the offer of the continuing partners, he was rightly adjudged to receive only nominal damages. The fact that the plaintiff had under his agreement the security of several persons instead of only two, and therefore, although he might not actually suffer by the change, yet,

there was a substantial breach of agreement, was a contention not supported by the Court.

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Outgoing Partners and Creditors.

Last year the House of Lords laid down the rule that if a retiring partner leaves a firm, and the continuing partners agree to pay the debts and indemnify the outgoer, the creditors who know of and raise no objection are bound to treat the outgoer merely as surety for the debts. (*Rouse v. Bradford Banking Company*, 1894, A.C. 586.) This decision has been added to by the more recent case of *Lloyd's Bank v. Rootes*. There a trustee under a will was empowered to carry on the testator's business, and he did so. In that capacity as trustee he became partner in the firm. Subsequently he retired, at the same time giving notice to the bank, to which the firm and he owed a large sum of money. The bank thereupon opened a new account, and the sums which were received from the continuing firm were duly credited to the new account. The Divisional Court, however, held that as the bank had no notice of the terms on which the trustee retired, he remained a principal debtor, and did not become a surety, and, further, that the bank was not bound to allocate the moneys received to the old account. The result of this decision is, therefore, that creditors are not bound to treat the outgoing partner merely as surety for debts unless such creditors receive notice of the terms of the retirement.

T. F. UTTLEY.

Books Received.

The Anglo-Indian Codes. By Whitley Stokes, D.C.L. The Clarendon Press, Oxford.

The Principles of Bankruptcy. By Richard Ringwood, M.A. Stevens and Haynes, London, 1895.

A Manual of Public International Law. By Thomas Alfred Walker, M.A., LL.D., Lecturer of Peterhouse, Cambridge. The University Press, Cambridge, 1895.

Text-Book of Forensic Medicine and Toxicology. By Arthur P. Luff, M.D., Official Analyst to the Home Office. Two Vols. Longmans, Green and Co., London, 1895.

A Digest of the Law of Light. By Edward Stanley Roscoe. Reeves and Turner, London, 1895.

A Manual of the Study of Documents. By Persifor Frazer. J. B. Lippincott Coy., London and Philadelphia.

The Life of Sir James Fitzjames Stephen, Bart., K.C.S.I., a Judge of the High Court of Justice. By his brother, Leslie Stephen. Smith, Elder and Co., London, 1895.

The Theory of Credit. By Henry Dunning MacLeod, M.A. Second edition. Longmans, Green and Co., London.

The Principles of Negligence. By Thomas Beven. Second edition. Two Vols. Stevens and Haynes, London, 1895.

A Treatise on the Statutes of Limitations. By Edgar Percy Hewitt, LL.D. Sweet and Maxwell (Ltd.), London.

Our Indian Protectorate. By Charles Lewis Tupper. Longmans, Green and Co., London.

The Theory and Practice of Private International Law. By L. v. Bar. Translated by G. R. Gillespie, of the Scottish Bar. William Green and Sons, Edinburgh.

The Principles of Summary Criminal Jurisdiction According to the Law of Scotland. By Henry Hilton Brown, Procurator-Fiscal. T. and T. Clark, Edinburgh, 1895.

Adoption and Amendment of Constitutions in Europe and America. By Charles Borgeaud. Translated by Charles D. Hazen. Macmillan and Co., London, 1895.

La Legislazione Inglese Sulla Stampa. By Celso Grassi. Zanichelli, Bologna, 1895.

Einleitung in eine Entwicklungsgeschichte des Rechts. By Dr. Ernst Neukamp. Carl Heymanns Verlag, Berlin, 1895.

Notes on Perusing Titles. By Lewis E. Emmet. Jordon and Sons, London, 1895.

De la Contrebande de Guerre et des Transports Interdits Aux Neutres. By Richard Kleen. Pedone-Lauriel, Paris.

Om Krigskontraband Enligt Allmän Folk rätt. By the above. Fryckt Hos A. L. Normans. Boktryckeri-Aktiebolag, Stockholm.

La Question D'Alsace. By Jean Heimweh. Hachette et Cie., Paris.

La Guerre et La Frontière Du Rhin. By the above. Colin et Cie., Paris.

Reviews.

Infamia; its Place in Roman Public and Private Law. By A. H. J. GREENIDGE, M.A., Hertford College, Oxford. Oxford: Clarendon Press. 1894.

The monographs on Roman Law issued by the Oxford University Press are becoming an important factor in the progress in England of that rather neglected study. Within a few years have appeared Dr. Grueber's *Lex Aquilia* and Dr. Moyle's *Contract of Sale in the Civil Law*. Mr. Greenidge's *Infamia*, though of a somewhat narrow scope, is quite worthy of its predecessors. It is more interesting than might have been expected *a priori*. The explanation of this no doubt is that Mr. Greenidge is a master of his subject, and any subject treated by one who has made it the study of years can hardly fail to be interesting. A reviewer cannot but recognise that Mr. Greenidge knows far more about it than his critic possibly can.

The aim of the work is to show the gradual and half-unconscious transition from the indefinite moral influence of the censor to the definite legal rules fashioned in the Edict and adopted or extended by numerous imperial constitutions. The basis of the prætorian *infamia* was procedure, the granting or refusing of *postulatio* in the prætor's court depending on the character of the applicant. The *infamia*, in case the applicant were infamous, might be either mediate (*juris*) or immediate (*facti*), that is, might be the result of judicial sentence, or might attach simply from following a trade which in itself was regarded as infamous, such as that of an actor or gladiator. Both in the text and in his appendices, Mr. Greenidge has the courage of his convictions, and does not hesitate to measure swords even with Savigny and Mommsen. He holds, for instance, that there is no evidence to justify the theory of Savigny that there was during the Republic a definite set of legal rules affixing *infamia* according to fixed principles, and distinct from *censoria notatio*, which was discretionary.

The technical nature of the discussion is relieved from time to time by stories more or less interesting. One is that of the tribune Marcellus, who, on the authority of Aulus Gellius, urged the citizens to marry, and so show that they preferred the safety of the State to their own happiness. The same writer records

the answer of a Roman Knight, who, on being asked by the censor why he was better cared for than his horse, replied that he looked after himself, but his slave looked after his horse. It was an unfortunate speech, for the censor regarded it as *parum reverens*, and reduced him to the ranks of the *ararii*.

The book might perhaps have been made more interesting by references to Continental and English Law in the past, for at present anything like the Roman conception of *infamia* appears to be obsolete. The *infamia* of the Roman classical Law is at the present time no institution of modern civil Law, say Messrs. Tomkins and Jencken in their *Compendium of Modern Roman Law*, and there is apparently only one modern work on the subject, Schomburg, *De Turpitudine seu Infamii Facti* (Cassell, 1840). In England *perennis infamia obprobrium* was in Glanvill's time the result of defeat in the wager of battle, and infamy was a disqualification of witnesses up to Lord Denman's Act (6 and 7 Vict., c. 85), which abolished it. Something like it is to be found in the challenge of a juror *propter delictum* and in certain disabilities for the holding of public office or the exercise of public rights which are attached by the Corrupt Practices Act, the Bankruptcy Act, the Local Government Acts, and other enactments. The "infamous conduct" for which a medical man may be struck off the register by the General Medical Council under the Medical Act, 1858, leads to professional rather than legal disqualification.

Voet's Titles on Vindicationes and Interdicta. Translated into English with Introduction, Notes, &c. By JOHN J. CASIE CHITTY, B.A., S.C.L., Advocate, High Court, Madras, and Supreme Court, Ceylon. Colombo.

The study of Roman-Dutch Law is not very vigorous in England, except in the case of those who intend to practice in Ceylon, Guiana, and those parts of South Africa where it is the authorised system. The recent attempt of the Council of Legal Education to provide lectures in the subject probably did not attract a large audience. Still the Law is interesting to those who have made some way towards mastering the text of the *Corpus Juris*, for it shows Roman Law as a living growing system, not merely a useless subject to be learned up to the minimum necessary to pass examinations. A good instance of this is a case before the Judicial Committee in 1884, *Mackellar*

v. *Bond*, 9 App. Cas. 715. It was there held that a woman cannot be effectually bound as a surety unless she specially renounces the privileges secured to her by the *Senatusconsultum Velleianum*, which students of Roman Law well know was passed as far back in history as the first half century of the Christian era. We also find from the text of Voet, as brought up to date, that the *Actio Publiciana* and several other familiar methods of Roman procedure are in use up to the present day. The book will be useful to those who wish to know something of the procedure in Roman-Dutch Law, which in many respects may be favourably compared with our own, the only criticism that a reviewer more accustomed to English practice may venture to pass on the book is that in his introduction Mr. Chitty sometimes cites rather common-place and elementary authorities, and that some of the references in the text and notes are not very clear. A table of abbreviations might have been appended with advantage. It is worth noticing that Voet had a great admiration for William III., and that the first edition of his *Commentaries*, published in 1698, was dedicated to that King.

I Mississipiani. By GIUSEPPE CAETANI. Rome: Tipografia Nazionale. 1894.

The object of this little work appears to be to shew the danger of financial ruin, especially in Italy, which is likely to result from unlimited speculation in finance and hypothecation of the future. The *Mississipiani* are the modern successors of John Law, and their effect on State finance must be the same. Not for the first time are we told of the ruinous effect of the enormous issue of paper currency which the Italian Government have recently established, to the disgust of the tourist and the lowering of the credit of Italy abroad. The later part of the work dealing with modern financial speculation and commercial panics may not be interesting to all readers, but the same objection will not apply to the earlier and historical part. The schemes of Law Mississippi and otherwise, supported by the Regent, the feverish life of the Rue Quincampoix, the growing and bursting of the bubble, are set before the reader with Italian picturesqueness. As much as 50 livres a day, we are told, was given for the use of a single room in the famous street. The Regent could be just sometimes.

When Count Horn, his relative, had killed his opponent in a duel, even his Royal blood did not save him from being burned alive in 1720, only four days after the duel. *Quando ho del sangue malato in più, me lo faccio cavare*, said the Regent.

The University Law Review. Conducted by AUSTIN, ABBOTT, Dean of the Law School, University of the City of New York, Vol. II., 1894. (F. M. Crossett, Manager, 1122, Broadway, New York, U.S.A.)

We have here a specimen of the Legal Literature which can be produced by an American Law School, working in connection with an American University, the like of which does not exist among us, and which is therefore not comparable to any portion of the Legal Literature of this country, so far as we are aware.

The Law School which produces this *Review* is, we learn, one of such established position as to have entered upon the thirty-sixth year of its life in October last, the opening number of Vol. II. of the *Review* (which, however, is probably older than it looks, having formerly been the *Inter-Collegiate Journal*) now before us, having been issued last November. Its course of study covers two years, and confers the degrees of Bachelor and Master of Laws, but not apparently, the Doctorate. Perhaps that is reserved for the grant, either as an Honorary Degree solely, or, as the natural coping stone of the edifice raised by the Law School, for ordinary graduation also, but, like the Honorary, on the motion of the Senate or other Governing Body of the University, as distinguished from its department, the Law School. The "Notes on recent cases" include some curious matter, while the Articles deal with a wide diversity of Legal topics, as is indicated in the Editorial "Topics before us," which claims for the opening number of Vol. II. "an unusual number" of topics of a legal nature as attracting the attention of the American public.

Something of the nature of this variety may be gleaned from the titles of the subjects of the principal Articles, dealing respectively with *What Liabilities may be Provided for in an Assignment for Benefit of Creditors*, *National Corporations*, *The Right to Shoot a Burglar*, *The New Calendar Practice in New York*, *Presence by Telephone*, and *Legal Education*. Under the last heading we find an interesting notice of a new departure at Hartford, Conn.,

in the shape of the Hartford School of Sociology, qualifying for the Degree of Bachelor of Sociology, opened on the 5th October last, under President Hartranft, the conductor of the *University Law Review*, Professor Austin Abbott, being himself one of the Lecturers, and taking the Family from the Legal point of view. The title of the new School is, as Professor Abbott says, "somewhat Academic," but the conductors of the undertaking are fully justified in including Law as one department of Sociology by the precedent of the Social Science Association in this country, of which Jurisprudence was always one of the Departments. It appears to us that such a School as that which President Hartranft has instituted may well claim, if it succeeds in casting firm root in American soil, to be carrying out in the United States, in a practical educational form, the work which was for so many years carried on in the United Kingdom by the combined Congresses and Sessional meetings of the Social Science Association, a most useful organisation, with which it was our privilege for years to be associated, and the loss of which we have never ceased to regret. We wish well both to President Hartranft and Professor Austin Abbott, and shall hope soon to hear more of their doings both at New York and Hartford.

The American Corporation Legal Manual. Vol. I. Edited by C. L. BORGMAYER, Member of the New Jersey Bar, Newark, N.J. Plainfield: Honeyman & Co.

Digest of Insurance Cases for 1894. By JOHN A. FINCH, of the Indianapolis Bar. Indianapolis: The Rough Notes Company.

The Insurance Agent: His Rights, Duties and Liabilities. By JOHN A. FINCH, of the Indianapolis Bar. Indianapolis: The Rough Notes Company.

The aim of the first work is to place before the legal profession of the United States and of other countries a concise synopsis of the laws regulating to the formation, organization, management and dissolution of the principal kinds of business corporations authorised to be organized under the laws of the various states and territories of the United States of America and incidentally to furnish similar information with regard to other countries. The book contains a synopsis of the Corporation Law of the different States of America, of the Dominion of Canada, of Mexico, and of other countries of Latin-America; also of England, the Netherlands, Italy, Germany, France and Russia.

There are also synopses of the Patent Laws of the United States and of foreign countries ; the same with regard to Trade Marks and to Copyright and Insurance. The compiler appears to have intrusted the preparation of parts of the work to Associates in different countries, and have produced thereby a cosmopolitan and well-digested treatise on a subject which it is needless to say must have given very considerable trouble and research. We, however, regret that in the synopsis relating to the Companies' Acts of England we find no allusion to the Acts of 1870, 1877, 1879, 1880, 1886, or to the two Acts of 1890 : but it is possible that the compiler did not consider them worthy of attention. Concurrently with this work is Vol. VII. of the *Digest of Insurance Cases*, containing 449 reported cases of the Courts of the United States, as also a few cases from England, Scotland and Ireland on disputed points in Fire, Life, Marine, Accident and Assessment Insurance, and effecting Benefit Societies. The Legislatures of many States of the Union have forms of Fire Policies, and the companies are, under such circumstances, left with no discretion as to their contracts, while other States content themselves with saying what shall not be in a policy of insurance. Other States provide rules of evidence solely applicable to insurance contracts, while all prescribed regulations of some sort not known to other classes of business. With all that the Courts have had to say upon the construction of policies, the companies still experience much difficulty in writing their contracts so plainly that there can be no room for doubt ; the ability to write English is not conspicuous in insurance offices. The Digest is bound to prove very serviceable, both to underwriters as well as to members of the profession who have to deal with contested claims. Mr. Finch also has wisely written a small work on *The Rights, Duties and Liabilities of the Insurance Agent*, a person who, acting in various capacities for insurance companies, is often perplexed with doubts when called upon to act hastily regarding matters of great importance to his principals. While representing companies who entrust him with their business, he must at the same time be alive to the interests of those who effect insurances. Thus placed between Scylla and Charybdis, it behoves the agent to know well his rights, duties and responsibilities. The books before us cannot fail to be of value to the legal and commercial communities, not only in the United States, but in this country also.

A Summary of the Law of Land and Mortgage Registration in the British Empire and Foreign Countries. By R. BURNET MORRIS, M.A., LL.B., of the Middle Temple, Barrister-at-Law. London: Clowes and Sons, 1895.

This book is based upon the author's pamphlet on "Registration of Titles," published in 1886. Its object is to present to the reader a short statement of the law of land and mortgage registration in operation in the United Kingdom, British Colonies, and other parts of the world. In early times land transfer was invariably accompanied by a public ceremony, and the transfer was completed by the grantee or purchaser actually taking possession. Later on, the right to possession and the actual possession seem to have been conveyed by the simple process of exchange of deeds. The author explains in a lucid and concise manner the different attempts which have been made, from time to time, to register lands and mortgages, as well as the different systems of registration now in operation in England, Scotland, and Ireland, as well as in other parts of the world. An appendix, containing the Land Transfer Act, 1875, as well as the proposed amendments of the Bill of 1895, complete a well considered, well digested, and very useful work.

Notes on Land Transfer in Various Countries. By C. FORTESCUE-BRICKDALE, B.A., of Lincoln's Inn, Barrister-at-Law. London: Law Times Office.

This pamphlet deals with land transfer in the United States, in France, in Prussia and Austria-Hungary, in Switzerland, and in some of the British possessions, *i.e.*, Australia, Canada, and Scotland. It is merely an elementary work, but is well worth a perusal by the conveyancer.

Inebriety or Narcomania, and its Etiology, Pathology, Treatment, and Jurisprudence. By NORMAN KERR, M.D., F.L.S., Fellow of the Medical Society of London. Third Edition. H. K. Lewis, 136, Gower Street. London. 1894.

The consensus of opinion that habitual drunkenness is often a symptom or sequel of disease strengthens every year. The fact that the Secretary of State for the Home Department has intimated his intention of introducing a Bill into Parliament based on the recommendations of the recent Departmental Committee on Inebriates, including compulsory curative

seclusion and remedial treatment, is an augury of improved legislative provisions for habitual drunkards at an early date. Doctor Kerr has in great part rewritten his original work with the addition of nineteen chapters, including a critical review at page 678 of a statement of the existing law on intoxication, as a defensive plea in criminal trials, by the Right Hon. Sir Henry James, Q.C., M.P. ; while under the "Medico-Legal relations of inebriety," some space has been devoted at page 708 to police procedure with persons found on the streets apparently drunk though in truth perfectly sober. Although decidedly bearing the medical imprint, the work is likely to be of use to the legal practitioner in that special class of cases where scientific testimony is available ; while the tone and character of the book renders it one which may be safely depended on.

Text-Book of Forensic Medicine and Toxicology. By ARTHUR P. LUFF, M.D., B.Sc. Lond., Physician in charge of out-patients and Lecturer on Medical Jurisprudence and Toxicology in St. Mary's Hospital ; Official Analyst to the Home Office. Two vols. London : Longmans, Green & Co. 1895.

In these latter days, when scientific evidence and the opinions of experts are largely called in aid of evidence in our Courts of Justice, it is becoming more and more necessary for the successful advocate to be well versed in the elementary principles of medicine and toxicology. The modern rule of evidence has been to admit facts, not otherwise relevant, to be proved as supporting, or being inconsistent with the opinions of experts. The advocate, therefore, who is ignorant of the above-mentioned principles is distinctly at a disadvantage as compared with his more fortunate brother, who has made a study, however slight, of Forensic Jurisprudence. Dr. Luff has endeavoured to meet this want by means of the very excellent work before us. He acknowledges that he has availed himself of materials from the works of Casper, Taylor and Stevenson, Reese, Blyth, Dixon, Mann, and others, and has spared no pains to bring all sections of his book up to date. He has given special care to the section on toxicology, and very useful directions for the treatment of cases on poisoning. He has been assisted by Mr. Jackson Clarke, Pathologist to St. Mary's Hospital, in connection with the chapter on the making of *post-mortem* examinations ; Dr. Gow, physician at St. Mary's Hospital, has also rendered assistance in the course of the work. The law

concerning dying declarations, taken in the absence of a magistrate, is very well laid down ; he advances excellent rules for the delivery of medical evidence, while his more immediate knowledge of medicine and chemistry, treating of blood stains, wounds, lightning, asphyxia, lunacy, questions connected with the dead body, and identity of remains, serves to develop one of the best imagined and best completed works on medical jurisprudence which we have ever had before us.

A Manual of the Study of Documents to Establish the Individual Character of Handwriting and to Detect Fraud and Forgery. By PERSIFOR FRAZER, J.B. Lippincott Company, Philadelphia.

This is a very curious book, dealing with the study of handwriting. The writer divides his Treatise into two parts: the first deals with physical examination and the second with chemical examination. He writes fully on his subject, dealing with individual character, the writing instrument, the writing fluid, preliminary examination, use of magnifying instruments, the sequence in cross lines, and cognate matters. He also draws attention to the laws relating to the testimony of experts on handwriting, referring to the late Sir J. F. Stephen, K.C.S.I., Judge of the Queen's Bench Division, and to the able judgment of the Supreme Court of Pennsylvania in *Travis v. Brown* (43 Pennsylvania State Reports, p. 9), delivered by Mr. Justice Woodward. It is likely to prove a mine of wealth to experts on handwriting.

Parliamentary Government in the British Colonies. By ALPHEUS TODD, LL.D., C.M.G. Second edition. Longmans, Green and Co. 1894.

This volume attempts for the youngest legislative offspring of the Mother of Parliaments the historic service which Sir Erskine May has rendered to their Imperial parent. It is an account of the origin, development, and exercise of representative government in the Colonies of the British Empire. It was only in the early years of Her Majesty's reign that the first experiment in responsible Government was tried within any colony. Canada was the pioneer, and it was in 1841, under Lord Melbourne's Administration, that the privilege with its perils was conferred. Into the dominion the British North American Colonies were confederated in 1867. Two years earlier, by 28 and 29 Vict., c. 163, the right was bestowed upon

all colonial representative legislatures to enact laws for their local constitution and their own procedure. At this day such bodies meet and exercise their functions in three of the great divisions of the globe.

The majority of the colonists seem to be, like the Prime Minister, "two chamber" men. But for Ontario, Manitoba, British Columbia, and New Brunswick one chamber suffices. Prince Edward's Island holds an academic opinion in favour of a single chamber, and has passed a bill to embody the view, but the Royal assent has not been received.

The book as a whole presents a progressive series of interesting studies. The problems at the Cape, with its circle of savage tribes, are tinged with war. In New Zealand the representation of the native element is fostered by the provision (not always carried out) that there shall be two Maori Ministers in each Cabinet. In parts of Australia where enterprise is impatient of the teachings of prudence, paper currency is a keen subject of controversy; while in Queensland where labour representation is potent, the exclusion of the Chinese exercises the public mind. In the oldest of the Colonies where two European civilizations, marked by a difference of creed and of language, combine, the problems relate to religion and liquor licences. Some of these points are now settled, but there remains common to all the important question of Imperial Defence.

The work, though capable of improvement in subsequent editions, is well presented. The condensed style which is such a marked feature of the later editions of Sir Erskine's great work, would be out of place in a treatise which must be largely explanatory, and which has to treat of many distant constitutional assemblies, all of which are inspired by the exceeding vigour of youth. But it is well worth the attention of all who are interested in federation and the relation of the home government to the self-governing Colonies. No one can rise from its perusal without a profound and proud feeling of the gigantic future of the Empire. Truly it is necessary to look out of England to learn the vast measure of England's power.

The Parish Councillor: His Powers, Duties, and Responsibilities.
By F. ROWLEY PARKER, Solicitor and Parliamentary Agent.
Knight & Co. 1895.

The new Parish Councillor need not enter upon the discharge of his duties without an adequate knowledge of the powers and

obligations which the Local Government Act of 1894 have attached to the body which he adorns. From the wide range of society out of which members may be chosen, that perhaps is an advantage. To serve on a common jury many qualifications are necessary, but no British subject, whatever his circumstances, is disqualified as a Parish Councillor who is *sui juris*, who has not needed for 12 months to supplement his private fortune by parish relief or who has allowed four years to pass since he was bankrupt, or was last convicted, on indictment or summarily, and imprisoned for a crime, unless at the date of his candidature he holds office under the Council or has made a contract with them for profit. Therefore a book such as Mr. Parker's, which aims at giving a complete but precise account of the Parish Councillor's functions without elaborate legal details, is to be welcomed; and if it enables the elected Councillor who is at present without the knowledge to understand and take a proper part in the subjects which come up for discussion in the council room, it will have served a useful purpose in every way.

Sources of the Constitution of the United States. By C. ELLIS STEVENS, LL.D., D.C.L., F.S.A. (Edinburgh). Macmillan and Co., London and New York. 1894.

Adoption and Amendment of Constitutions in Europe and America. By CHARLES BORGEAU. Translated by CHARLES D. HAZEN, Professor of History in Smith College, with an Introduction by JOHN M. VINCENT, Associate of the Johns Hopkins University. Macmillan & Co., London and New York. 1895.

Mr. Gladstone has observed that "as the British Constitution is the most subtle organism which has proceeded from progressive history, so the American Constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man." There is some truth in this, for the American Constitution, established as a written document by the Convention and in circumstances quite unique, has many elements peculiar and characteristic; but it is beginning to be realised that the American Constitution, though possessing elements of novelty, is not after all the new creation that Mr. Gladstone would imply. It is not the original composition of one body of men nor the outcome of one definite epoch. It rests upon very old principles, laboriously worked out by long ages of constitutional struggle; it looks back to the annals of the colonies and

of the motherland for its sources and its explanation. The Constitution has been made what it is by the political development of many generations of men, and it is not the mere sole creation of the Philadelphia Convention.

Mr. Ellis Stevens, in the work before us, treats of that document which goes by the name of The American Constitution, and avoids all side issues. He deals with the making of the Constitution, its legislative organism, its legislative powers, points out in what manner its executive is related to the ancient executive of England, discloses the popular feeling of Americans against kingship—an opposition largely due to the fact that the struggle for emancipation had been forced upon them by their Sovereign in person—and describes the derivation of the American Courts from the English Colonial Courts and Judges, and explains, in a very lucid manner, the continuity of our Bill of Rights in Acts of American Legislation. An excellent Treatise on an interesting subject, well digested and clearly evolved.

Mr. Borgeau devotes his work to the process of Constitution-making in those States which admit of an isolated treatment and render possible the attainment of a general theory. He points out that a Constitution is the fundamental law according to which the government of a State is organised and the relations of individuals with society regulated; it may either be a code or a collection of texts promulgated at a certain time by a sovereign authority, or in the second place it may be the result of a series of legislative Acts, judicial decisions, precedents, and traditions of dissimilar origin and unequal value. The English Constitution—the oldest of all Constitutions—belongs to the second division. The private law of the United Kingdom is uncodified, and her fundamental law is unwritten. An unwritten Constitution does not, as a whole, furnish innovators with a definite concrete point of attack; but as it lies within the ordinary competence of Parliament to increase or diminish it by mere statutes, indirect blows may be aimed at it all the more dangerous because not immediately and generally apparent. Mr. Borgeau direct his study to those countries which may be said to fall within the first division; they are becoming more and more numerous, their public law may be considered apart from the power which creates it, and their political institutions are based upon a fundamental statute emanating from this power. The author has treated the subject objectively in a rigorously scientific and impartial manner; the method he

employs is largely historical. Modern Constitutions are not the systematic work of Jurists. They have sometimes been the result of theoretical speculations. We can only judge constitutional system correctly by studying the origin of the fundamental law upon which that system is based, or by tracing the evolution of the customary law to which it conforms. The aim of the book before us is to shew the possibilities of such an investigation, beginning with the origin, growth, and character of written Constitutions, then with Royal Charters, and constitutional compacts divided into the German group and the Latin-Scandinavian group, lastly, with Democratic Constitutions, viz., the United States of America, France, and Switzerland. The two books before us should be found in the hands of every jurist and student of Constitutional history.

A Digest of the Law of Light. By EDWARD STANLEY ROSCOE, Barrister-at-Law. Third edition. Reeves and Turner, London. 1895.

It is fourteen years since Mr. Roscoe published his first edition of this useful work, of which we are pleased to hail the third edition. It is undoubtedly true that the rapid growth of our towns makes the easement of light more and more important. During the last few years several important decisions have made this branch of law more clear, and it has thus become a subject intelligible to laymen as well as to lawyers. The work has been carefully digested and as it will be seen brought down to the latest date; a marginal reference drawing attention to the newly decided case of *Foster v. London, Chatham and Dover Railway Company*, L.R. [1895] 1 Q.B. 711, which overrules the case of *Norton v. London and North-Western Railway Company* decided by the late Vice-Chancellor Malins. We recommend the work to the architect as well as to the lawyer, builder, and contractor as very reliable. It has useful precedents, forms, and agreements.

Notes on Perusing Titles. By LEWIS E. EMMET, Solicitor. Jordan & Sons, London. 1895.

The aim of these notes is to help the reader on the subjects most frequently arising and most needful to be remembered on a perusal of abstracts of title. An epitome of the notes has been added by way of reminders to be glanced over after the perusal of an abstract, thus rendering the danger of overlooking the

points referred to therein less likely to occur. The author has evidently given considerable time and attention to the collation of this little book; and he has succeeded well. There is a good index, but the space devoted to explaining the meaning of abbreviations, and also the list of text-books consulted, might be omitted in a future edition as being beyond the scope and purpose of the book.

Le Système Judiciaire de La Grande Bretagne. 2 Vols. By le COMTE DE FRANQUEVILLE, Membre de l'Institut, Ancien Maître des Requêtes au Conseil d'Etat, Ancien Avocat à la Cour de Paris. Paris: J. Rothschild.

The judicial institutions of England are less known to foreigners than her political organisations. All nations which have adopted parliamentary government have copied more or less the British Constitution, but no continental country has ever copied our judicial system. Foreign writers have therefore hitherto neglected to treat of a subject of which the study is so dry, and which cannot be properly known but by a personal and prolonged examination; for books are limited in size and space, and although numerous works of practice are to be found in England, there does not exist on the Continent a complete acquaintance with this subject. M. de Franqueville has thought that it would be well to fill this void, and has completed his work on the Government and Parliament of Great Britain in two volumes. He shews first how the separation of these powers is governed, and what is the nature of the relations between the executive and legislative powers and the judicial bench. To insure on the one hand the absolute independence of the Judges, and on the other hand to avoid any encroachment of the Law on the domain of the Government, is a delicate problem, the solution of which would seem to be theoretically impossible; but of which we have, nevertheless, found a practical solution in a way most wise and satisfactory. The office of the Law being once established, the author describes the stage on which it is exercised from the two highest Courts, viz.:—The Privy Council and the House of Lords, to the lowly police and county courts. He shews from the time of the Saxons unto the present day the origin of, and the changes in, each court which has from time to time been established, modified, or allowed to fall into desuetude, and lastly, the actual organisation and power of

each. This plan once sketched out, it is interesting to note who are the actors on the stage. It is shewn how the judicial studies are organised, and the writer is astonished to find that admission to the Bar, and consequently to the Bench, depends on four private Societies, the Inns of Court, which exercise by virtue of prescription the right to grant or refuse the privilege. The writer falls into the serious mistake of imagining that the examinations are practically *nil*, and that the studies are by no means serious; with true French love for good cookery and gastronomy he revels in the wrong idea that the principal condition to be fulfilled by the law student consists in eating each Term a certain number of dinners, in the spacious Halls of the two Temples, Lincoln's Inn or Gray's Inn! The author is pleased to find that we, even in matters of law, prefer practice to theory; but he arrives at the false conclusion that the Bar contains few learned jurisconsults, although he admits that it furnishes staunch defenders, and maintains an excellent nursery garden to provide for the Bench.

The chapter on the Judges is not the least interesting of the work. The reader is shewn why the Bench of Great Britain occupies such a high place in the State, and enjoys such a *prestige* in the nation. Méremée, in one of those skits of which he was such a master, but which are often full of exaggeration, said that in France a man was made a Judge when he was found incapable of being an advocate. Our Gallic neighbour will find, from a perusal of this work, that in England the Judges are taken exclusively from among those barristers who have risen in their profession.

The author rejoices to find that the English Judges of the High Court are few in number, and, as contrasted with his own poorly paid officials, magnificently remunerated. He is thunder-struck at finding that even the most minor member of the Bench of the High Court of Justice receives a salary of £5,000, this being nearly equivalent to that received by the first minister of *la belle France*. Again, and he rightly deems it to be more important still, he finds that the Judges cannot be removed without the consent of both Houses of Parliament, but he is incorrect in thinking that they cannot be promoted to a higher position. We will not dwell upon the rather curious chapters which follow, they are dedicated to the clerks, registrars, and other assistants of the Bench, to solicitors and to barristers, who he informs us have no direct relations with their clients, a conclusion which requires

to be modified. Next he gives us a learned treatise on juries, of which he considers the origin to be very obscure, but very interesting, and that their duty is very considerable, being, he says, called upon to sit, not only, as in his own country, in criminal cases, but also in the greater number of police-court cases! as well as in civil actions. The second volume of the work deals with the civil and criminal procedures, and the author gives sufficient details to make our procedures known to his country, mostly in all the more important points, omitting the smaller details. He is surprised that we have not, like the French people, codes of laws methodically formulated, but rely on unwritten laws, statutes, jurisprudence and customs. His limited acquaintance with Teutonic and Saxon procedure causes him to be surprised that we can exist with laws which he describes as being pieces of all sizes, shapes, and colours, some new, some old, more or less cleverly interwoven. In this part of his work we find a number of details, interspersed with anecdotes, concerning what he considers to be the curious habits of the English people. The author is much struck with the administration of our criminal law; he details with what a mixture of kindness and firmness it is applied by the Judges, and with what jealous care the Bench watches, at one and the same time, both the rights of society and those of humanity. The chapter on capital punishment glances at the reform of some twenty-five years standing, introduced in the method of executing criminals. He finds it desirable that in the interior of the prison, and out of view of the public, the condemned man be put to death. He also points out under what conditions our system of penal servitude, which has taken the place of transportation, is enforced. Scotland has kept her ancient judicial institutions completely distinct, and very different, from those of England. The study of this system, of which certain parts, notably those which concern criminal procedure, are like ours, is full of interest. As to Ireland, he truly states the imposition on her of English legislation, but confines himself to shew the points of difference, and how at the end of this the nineteenth century, a portion of the British kingdom, Ireland, has been placed under a species of martial law, and other means of coercion are deemed necessary in that uneasy Province. In conclusion the author draws a comparison between the judicial systems of France and England. He draws attention to the very considerable influence exercised by

public opinion over the English Judicial Bench, which having been so servile and venal in remote times, has now become a model of impartiality, independence, and honour. Although with a Frenchman's love of his own country he considers that in point of view of judicial science, and even of eloquence, the Bar of Paris is superior to that of London, he does not hesitate to place our Judges higher than his own. He thinks that our Civil procedure, although weakened by serious faults, contains some rules worthy of imitation by his own country. As to our Criminal procedure he believes that it is assuredly worthy of great praise, but that on the other hand, it is on many points very faulty; that it gives to the rich defendant too many facilities to escape condemnation, and that it does not give to the poor sufficient means to defend themselves in a proper and useful manner. He admits, however, that our Judges do attempt by all legal means to atone for the deficiencies of the Legislature, and to remedy the blots on the Statute Book, while his own, in general, act in quite a contrary manner. It is not possible to enumerate the numberless questions treated of by our author; it suffices, however, to say that both the politician and the jurisconsult will find in this work an inexhaustible mine of information, while to the Englishman it is not uninteresting to read a foreign opinion on our Courts and administration of justice.

The Principles of Bankruptcy. By RICHARD RINGWOOD, M.A., of the Middle Temple, Barrister-at-Law, late Scholar of Trinity College, Dublin. Sixth Edition. London: Stevens and Haynes. 1895.

This book is so well known, that it has attained a position where *laudatur ab his, culpatur ab illis* can no longer affect it. We are pleased to herald the sixth edition of it. We notice that a portion of this edition has been re-written with an attempt to simplify the difficult subject of Bills of Sale. The author acknowledges his indebtedness to Mr. T. E. Haydon, B.A., of the Inner Temple, and we compliment both these gentlemen on the success which they have obtained. We should add that the book is very complete, and brought down to the latest date, even containing the County Court Rules of 1895 concerning judgment debtors.

A Manual of Public International Law. By THOMAS ALFRED WALKER, M.A., LL.D., Fellow and Lecturer of Peterhouse, Cambridge. Printed at the University Press, Cambridge. 1895.

This book is intended by the author to supply a need felt by many students commencing to read Public International Law, that is to say, a small volume, which, whilst excluding unnecessary detail and mere theoretic discussion, affords a general introduction to this elaborate study. Mr. Walker has written nothing new—nor, indeed, does he claim to have done so—he has merely trodden the well-worn paths of international jurisprudence, and his work may rather be looked upon as an *epitome* of such standard text-books as Lawrence's *Wheaton*, or Sir Sherston Baker's *Halleck*. The cases mentioned in those compendious tomes are fairly well reproduced in the work before us, although of necessity some are omitted; for example, that of Simon Tousig, which has a salient feature distinguishing it from Koszta, which our author quotes. Again, in his endeavour to be concise his zeal sometimes carries him too far, and he trips; thus at page 47 he tells us with regard to the case of *R. v. Keyn* that "all question in the matter was, however, set at rest in 1878 by the Territorial Waters Jurisdiction Act, which expressly conferring power on British Judges to try culprits for criminal offences committed on board foreign vessels within three miles of low water mark on a British shore," &c. The statement is distinctly wrong. A perusal of the Act in question will show him that such power only applies in the case of *indictable* offences. Cases punishable on summary conviction, such as being drunk and disorderly, cruelty to animals on board ship, and so forth, are still without the purview of the above Act. Further at page 136, some of the regulations adopted by the delegates at the Conference of Brussels, 1874, are given to the student, but we grieve to say, that no hint is afforded him that these regulations are not in force as regards a single civilised nation; while at page 140 the additional articles of the Convention of Geneva, 1868, are spoken of as being "less authoritative," when in fact they are of no authority at all. Barring faults of omission and commission, which are probably only noticeable to the practised eye of the jurist, the work before us is undoubtedly the evidence of very considerable pains and labour on the part of Mr. Walker, and wishing him every success, we sincerely hope that he may soon produce a new edition thoroughly revised and corrected to date.

The Principles of Summary Criminal Jurisdiction according to the Law of Scotland. By HENRY HILTON BROWN, Procurator Fiscal of Elginshire. Edinburgh: T. and T. Clark. 1895.

Mr. Brown deserves great credit for the admirable way in which he exhaustively treats his subject. He deals with principles, and not forms of summary procedure. He shews the various steps of summary procedure in criminal and quasi criminal cases, from the complaint made against the offender, the warrant issued for the charge, the matters at the trial, the judgment, and appeal. In Scotland, the chief courts of summary criminal jurisdiction are the Sheriff Court, the Justice of Peace Court, the Burgh Magistrates' Court, and the Police Magistrates' Court. Where there is a right of appeal, the High Court of Justiciary in Edinburgh, or on Circuit, takes cognizance of the case. A very noticeable and characteristic feature in the administration of criminal justice in Scotland, whether in the Inferior Courts or in the Superior Courts, is that, where a crime is to be prosecuted to vindicate public justice, whether the offence be an assault, a theft, or a nuisance, or anything else, there is always a public prosecutor attached to the court to receive complaints and to take all necessary proceedings up to judgment. But where the offence is of a private character, the person injured prosecutes his own case on his own responsibility. The Sheriff exercises a wide and important jurisdiction in Scotland in civil and criminal cases, and, in rank, corresponds to an English County Court Judge; but his jurisdiction in civil matters extends to all matters of debt and simple contracts to any amount. The Summary Criminal Jurisdiction of the Sheriffs in Scotland was remodelled in 1828 and that of the Burgh Magistrates in 1856.

Among periodicals we notice: *The University Law Review*, of New York; *The American Law Review*, of St. Louis, Mo.; *The Chicago Legal News*; *The Southern Law Review*, of Atlanta, Ga.; *The State Library Bulletin*, of Albany; *The Law Book News*, of St. Paul, Minn.; *The Toledo Legal News*, of Toledo, O.; *The National Corporation Reporter*, of Chicago; *The Virginia Law Journal*; *The Canadian Law Times*; *The Western Law Times*, of Canada; *India*, edited by Gordon Hewart, M.A.; *The Law Times*, London; *The Law Journal*, London.

Quarterly Digest.

INDEX

*of the cases reported during August, September, and October, 1894,
and in the "Weekly Reporter" for July.*

Where a case has already been given in the Digest for a preceding quarter, the additional report is given after the name of the case, with a reference to the volume of the Digest in which it first appeared, the thick number being the number of the volume.

- Africano, the* (68 L.J. P. 125), 19, 104, iii.
Aitken v. Ernsthausen (63 L.J. Q.B. 559; 70 L.T. 822), 19, 140, ii.
Aldin v. Latimer (L.R. [1894] 2 Ch. 437; 63 L.J. Ch. 601; 71 L.T. 119), 19, 126, iv.
Allen v. A. (L.R. [1894] P. 248; 63 L.J. P. 120; 70 L.T. 783), 19, 135, iv.
Allinson v. General Medical Council (63 L.J. Q.B. 534), 19, 91, vi.
Alt v. Lord Stratheden and Campbell, 28, iii.
Anderson v. Dean (63 L.J. Q.B. 668; 70 L.T. 830), 19, 134, v.
— *v. London City Mission*, 28, i.
Anglo-Austrian Printing, &c., Union, re, 6, ii.
Art Union of London v. Overseers of the Savoy, 17, vi.
Aspinall v. Sutton (63 L.J. M.C. 205), 19, 135, vii.
Asten v. A., 29, ii.
A.-G. v. Corporation of Cardiff (63 L.J. Ch. 557), 19, 130, iv.
Austin Friars, the, 22, vi.

Bagos, re, 13, v.
Baird v. Mayor, &c., of Tunbridge Wells, 9, ii.
Barber v. Burt, 8, i.
Bassett v. Tong (63 L.J. Q.B. 658; 71 L.T. 16; 42 W.R. 668), 19, 122, v.
Bassett Hound, the, 22, vii.

Bassett's Plaster Co., re (63 L.J. Q.B. 518), 19, 81, iii.
Beardmore, e. p.; re Clark (L.R. [1894] 2 Q.B. 393), 19, 116, vi.
Bennett v. Rebbeck (63 L.J. Ch. 596; 71 L.T. 74), 19, 123, iv.
Bexley Railway Co. v. North, 11, vii.
Black v. Clay, 11, iv.
Blane, e. p.; re Hallett (63 L.J. Q.B. 573), 19, 73, iv.
Blank, goods of, 2, ii.
Blyth Harbour Commissioners v. Newsham Churchwardens, 17, vii.
Bolton & Co., re, 5, ii.
Bond, goods of, 30, i.
Booth v. B. (63 L.J. Ch. 560; 42 W.R. 613), 19, 146, iii.
Bourke v. Nutt (63 L.J. Q.B. 497), 19, 73, iii.
Bradford (Mayor, &c., of) v. Pickles, 27, vi.
Brewery Assets Co., re, 5, i.
Briesemann, goods of, 29, vi.
Brinsden v. Bartlett, 25, v.
British, &c., Finance Corporation v. Couper (L.R. [1894] A.C. 399; 70 L.T. 882; 42 W.R. 657), 19, 120, vi.
Brooke v. B., 2, i.
Broughton v. B., 14, i.
Brown's Trade Marks, re, 26, iii.
Brown-Séquard, goods of, 29, vii.
Budgett v. B., 20, iv.

CADOGAN v. LYRIC THEATRE, 19, iv.
Cammell, e. p. (L.R. [1894] 2 Ch. 392; 63 L.J. Ch. 536), 19, 120, ii.

- Carter v. Fey, 20, ii.
 Chamber Colliery Co. v. Rochdale Canal Co., 4, i.
 Chapman v. Fylde Water Co., 16, i.
 Chartered Institute of Patent Agents v. Lockwood, 17, ii.
 China, &c., Bank v. American Trading Co. (70 L.T. 849), 19, 121, iii.
 Christy's Settled Estates, *re*, 22, iii.
 Clements v. L. & N.W.R., 11, i.
 Cobb v. G.W.R., 21, ii.
 Cocks, *e. p.*; *re* Hallett (63 L.J. Q.B. 676; 70 L.T. 891), 19, 116, v.
 Cole v. Eley (63 L.J. Q.B. 682; 70 L.T. 892; 42 W.R. 561), 19, 142, i.
 Collins v. North British, &c., Investment Co., 20, iii.
 Collis v. Laughier, 9, iii.
 Columbian Gold Mines, *re*, 5, viii.
 Company, A, *re* (63 L.J. Ch. 565; 71 L.T. 15; 42 W.R. 585), 19, 121, ii.
 Cooper v. Adams (L.R. [1894] 2 Ch. 557; 71 L.T. 72), 19, 115, vii.
 — v. Southgate, 7, iii.
 Coxen v. Rowland (42 W.R. 568), 19, 95, v.
 Cronmire, *e. p.*; *re* C. (63 L.J. Q.B. 616), 19, 116, i.

 DAKIN v. PARKER, 12, ii.
 Darlaston Local Board v. L. and N.W.R. (L.R. [1894] 2 Q.B. 694), 19, 100, i.
 Davis v. Corporation of Leicester (42 W.R. 610), 19, 145, iii.
 — v. Martin, 5, iv.
 Delhi S.S. Co., *re* (42 W.R. 602), 19, 121, i.
 De Peyrecave v. Nicholson, 19, iii.
 Derby (Mayor, &c., of) v. Grudgings, 13, ii.
 Dibb v. Brooke (63 L.J. Q.B. 665; 71 L.T. 234), 19, 115, viii.
 Downe v. Sheffield, 29, iii.
 Drew v. Gay, 8, iv.
 Drielsma v. Manifold, 25, iv.
 Dunhill, *e. p.*; *re* D. (63 L.J. Q.B. 686), 19, 114, vi.

 EARNSHAW-WALL, *re*, 25, ii.
 East London Waterworks Co. v. Charles, 27, v.
 Ecclesiastical Commissioners v. Parr, 7, iv.
 Eckersley v. Mersey Dock Board, 2, iii.
 Englishman, *the*, 24, v.

 Figg v. Moore, 2, vi.
 Flower v. L. & N.W.R. (63 L.J. Q.B. 547; 70 L.T. 829), 19, 125, iv.
 Foden v. F., 10, vii.
 Freeman v. General Publishing Co. (63 L.J. Q.B. 678; 70 L.T. 845), 19, 134, viii.

 GENERAL PUBLIC WORKS CO., *e. p.*; *re* EVELYN (63 L.J. Q.B. 658), 19, 116, iii.
 Georg, *the*, 24, iv.
 Gerard (Lord) and Beecham, *re*, 26, iv.
 Gilson v. G. (63 L.J. Ch. 555), 19, 137, iii.
 Glendarroch, *the* (L.R. [1894] P. 226), 19, 139, vii.
 Gordon v. Kensington Vestry, 15, iv.
 Gough v. Wood (63 L.J. Q.B. 564), 19, 93, i.
 Grand Junction Waterworks Co. v. Brentford Local Board, 27, iv.
 Greenwood v. Algeiras Railway Co. (63 L.J. Ch. 670; 71 L.T. 133), 19, 120, i.
 Grosvenor Hotel Co. v. Hamilton, 11, v.
 Guild v. Conrad, 10, iv.
 Guilford v. Lambeth, 18, v.
 Guyot v. Thomson, 16, iv.
 Gwynne v. Drewitt, 25, vii.

 HAMBRO v. H. (L.R. [1894] 2 Ch. 564; 63 L.J. Ch. 627), 19, 126, ii.
 Hamilton v. Ritchie, 22, i.
 Hamlyn v. Talisker Distillery Co. (71 L.T. 1), 19, 121, iv.
 Hampshire Land Co., *re*, 6, v.
 Hanfstaengl v. Empire Palace; H. v. Newnes, 7, vi.
 Harper v. Marcks (63 L.J. M.C. 167; 70 L.T. 804; 42 W.R. 605), 19, 114, i.
 Harrison v. Barney, 26, v.
 — v. Higson (70 L.T. 868), 19, 110, i.
 Harvey's Oyster Co., *re*, 6, iii.
 Head v. H. (63 L.J. Ch. 549), 19, 181, ii.
 Heath v. Overseers of Weaverham (63 L.J. M.C. 187), 19, 124, iv.
 Hebditch v. Mollwaine (63 L.J. Q.B. 587; 70 L.T. 826), 19, 127, iv.
 Helby v. Matthews (63 L.J. Q.B. 577; 70 L.T. 837), 19, 139, iv.
 Hercynia Copper Co., *re* (L.R. [1894] 2 Ch. 403; 63 L.J. Ch. 567; 42 W.R. 593), 19, 120, iii.
 Hewison v. Ricketts, 7, i.

Hewlett v. Allen, 15, i.
 Highgate School v. Sewell, 11, vi.
 Hill v. Brown (63 L.J. P.C. 46), 19, 110, iii.
 Hobson, *re*, 18, vi.
 Hoggan v. Esquimault Railway Co., 4, iii.
 Holford v. H., 11, ii.
 Holland v. Leslie, 18, ii.
 Hollinrake v. Truswell, 7, v.
 Hood-Barrs v. Cathcart, 14, iii.
 ——— v. ——— 14, v.
 ——— v. ——— 14, vi.
 ——— v. ——— 25, vi.
 Hooper v. Hill (63 L.J. Q.B. 598), 19, 81, i.
 Horsham Industrial Society, *re*, 6, iv.
 House and Investment Trust, *re*; *e. p.* Smith, 5, vii.
 Hoyle v. Oldham Assessment Committee (63 L.J. M.C. 178), 19, 133, iv.
 Hull Docks Co. v. Sculcoates Guardians (42 W.R. 595), 19, 133, ii.
 Hunt v. H., 18, vii.
 Hydarnes S.S. Co. v. Indemnity Mutual Assurance Co., 24, i.
 IND, COOPE & Co. v. KIDD, 21, iv.
 Industrie, *the* (70 L.T. 791), 19, 102, iv.
 Ingham v. Rayner (70 L.T. 825), 19, 146, v.
 Innes v. Newman (63 L.J. M.C. 198; 42 W.R. 573), 19, 131, v.
 Isaacs v. Reginall, 7, ii.
 Ives v. Willans (L.R. [1894] 2 Ch. 478; 63 L.J. Ch. 521), 19, 114, iii.
 J. v. S. (L.R. [1894] 3 Ch. 72; 63 L.J. Ch. 615; 42 W.R. 617), 19, 132, ii.
 Jacobs v. Crusha (63 L.J. Q.B. 526), 19, 97, i.
 Jamaica (Administrator-General of) v. Lascelles (63 L.J. P.C. 70), 19, 71, iv.
 Jaquess v. Thomas (63 L.J. Q.B. 572), 19, 142, iii.
 Jeffery v. St. Pancras Vestry, 16, ii.
 Johnson v. Newnes, 7, viii.
 Jones v. Daniel (63 L.J. Ch. 562; 42 W.R. 687), 19, 144, vi.
 Katy, *the*, 22, vii.
 Keeble v. Bennett (63 L.J. Q.B. 694; 71 L.T. 247), 19, 122, iii.
 Keep v. Newington Vestry (L.R. [1894] 2 Q.B. 524), 19, 129, vi.

Kemp v. Wanklyn (63 L.J. Q.B. 520), 19, 100, iii.
 ——— v. Wright, 3, v.
 Kennedy v. Thomas, 3, iv.
 Kinchella, *goods of*, 1, iv.
 Kleinwort v. Comptoir National (63 L.J. Q.B. 674), 19, 121, v.
 Kops v. The Queen, 9, 1.
 LAND SECURITIES Co., *re*, 5, vi.
 Laws v. Read, 2, iv.
 Le Bas v. Herbert, 1, i.
 Leese, *goods of* (63 L.J. P. 124; 70 L.T. 810), 19, 113, ii.
 Leicester (Mayor, &c., of) v. Beaumont Leys Churchwardens (63 L.J. M.C. 176), 19, 134, i.
 Lemmon v. Webb (L.R. [1894] 3 Ch. 1; 63 L.J. Ch. 570), 19, 131, iii.
 Leslie v. Earl of Rothes, 29, 1.
 ——— v. Young, 7, vii.
 Lister, *goods of*, 10, i.
 London County Council v. Herring, 15, ii.
 ——— v. Humphreys, 15, iii.
 London (Lord Mayor of) and Tubbs, *re* (L.R. [1894] 2 Ch. 324; 63 L.J. Ch. 280), 19, 145, i.
 Lord Advocate v. Bogie (63 L.J. P.C. 85), 19, 138, i.
 Lusk v. Sebright, 19, v.
 McDERMOTT v. BOYD, 12, iv.
 ——— v. ——— (L.R. [1894] 2 Ch. 428), 19, 114, vii.
 Macfarlane v. Lord Advocate, 21, v.
 Mack v. Postle, 15, vi.
 Makin v. A.-G. of New South Wales (63 L.J. P.C. 41), 19, 82, i.
 Malkin, *goods of*, 1, iii.
 Maplin Sands, *the*, 19, ii.
 Mary Thomas, *the* (71 L.T. 104), 19, 104, iii.
 Massey v. Morris, 24, ii.
 Mellin v. White (63 L.J. Ch. 687; 70 L.T. 901), 19, 127, v.
 Meunier, *re*, 10, ii.
 Meux Brewery Co. v. City of London Electric Light Co. (42 W.R. 644), 19, 131, iv.
 Meyrick v. A.-G., 13, iii.
 Mighell v. Sultan of Johore (63 L.J. Q.B. 593), 19, 86, v.
 Mills v. Johnston, 28, vi.
 Minehead Local Board v. Luttrell (42 W.R. 667), 19, 128, iii.
 Minter v. Carr (42 W.R. 619), 19, 130, ii.

- Minter v. Carr, 15, v.
 Mohideen Hadjar v. Pitchey, 9, v.
Mona, the, 23, ii.
 Moreton v. Hughes (63 L.J. Ch. 607;
 70 L.T. 901), 19, 146, iv.
 Morgan v. Hill, 26, ii.
 Morris v. Atherden, 28, iv.
 Musurus Bey v. Gadban (63 L.J.
 Q.B. 621; 71 L.T. 51), 19, 128, ii.
 NATIONAL DWELLINGS SOCIETY v. SYKES,
 5, iii.
 — Insurance Co., *e. p.*; *re*
 Hallett, 3, ii.
 Neville v. Matthewman, 20, i.
 New Zealand Loan, &c., Co., *re*, 6, i.
 Nichols v. Regent's Canal Co., 25, i.
 Nind v. Nineteenth Century Building
 Society (67 L.J. Q.B. 636; 70 L.T.
 831), 19, 126, iii.
 Norland (Vicar of) v. Parishioners,
 9, iv.
 N.E.R., *e. p.*; *re* Hicks (63 L.J. Ch.
 568), 19, 136, v.
 Northledge v. N., 10, vi.
 Noyes v. Patterson, 27, ii.
 ODDFELLOWS SOCIETY, *e. p.*; *re* WELCH
 (63 L.J. Q.B. 524), 19, 115, vi.
 Ontario (A.-G. of) v. A.-G. of Canada
 (63 L.J. P.C. 59), 19, 118, iv.
 Owen, *re*, 12, v.
 PAGE v. NORFOLK, 27, i.
 Pallister, *e. p.*; *re* Holloway (63 L.J.
 Q.B. 672), 19, 137, ii.
 Palmer v. Wick Steam Shipping Co.,
 11, iii.
 Parapano v. Happaz (63 L.J. P.C.
 63), 19, 77, iv.
 Patten v. West of England Iron, &c.,
 Co. (70 L.T. 908), 19, 114, ii.
 Pecke's Settled Estates, *re*, 22, ii.
 Peek v. Ray (63 L.J. Ch. 647; 70
 L.T. 769), 19, 135, iii.
 Perrett, *e. p.*; *re* Frape (63 L.J. Ch.
 678; 71 L.T. 80), 19, 141, v.
 Pharmaceutical Society v. Armson
 (L.R. [1894] 2 Q.B. 720; 63 L.J.
 Q.B. 532), 19, 132, v.
 — v. —
 17, iii.
 Pledge v. Carr (63 L.J. Ch. 651; 42
 W.R. 620), 19, 130, i.
 Pollard v. P. (70 L.T. 815), 19, 125, i.
 Ponting v. Noakes (63 L.J. Q.B. 549;
 70 L.T. 842), 19, 144, iii.
 Portsea Island Building Society v.
 Barclay, 3, vi.
 Prall v. Bevan, 28, v.
Primula, the (63 L.J. P. 118), 19,
 103, ii.
 Printing Telegraph and Construction
 Co. v. Drucker, 19, i.
 Pryor v. Petre (63 L.J. Ch. 531), 19,
 144, v.
 RAMSAY v. MARGRETT (63 L.J. Q.B.
 513; 70 L.T. 788), 19, 117, ii.
 Read, *re*, 25, iii.
 Reg. v. Berger (63 L.J. Q.B. 529;
 70 L.T. 807), 19, 122, vii.
 — v. Blaby (70 L.T. 879), 19,
 123, ii.
 — v. Bradley (63 L.J. M.C. 183),
 19, 124, iii.
 — v. Dennis, 20, v.
 — v. Dyson (70 L.T. 876), 19,
 123, i.
 — v. Essex Justices, 17, iv.
 — v. Jones (63 L.J. Q.B. 656; 42
 W.R. 607), 19, 123, vii.
 — v. L. & N.W.R., 21, iii.
 — v. Mansel-Jones, 18, iv.
 — v. Oxfordshire Judge, 8, iii.
 — v. Pontypool Judge, 8, ii.
 — v. Richardson (63 L.J. M.C.
 212; 70 L.T. 805), 19, 132, vi.
 — v. Silverlock, 8, v.
 — v. Sowerby (71 L.T. 300; 42
 W.R. 608), 19, 122, vi.
 Reid v. Wilson, 26, i.
 Reigate Assessment Committee v.
 S.E.R. (42 W.R. 585), 19, 95, iv.
 Reischer v. Borwick, 23, v.
 Richardson v. Rowntree (70 L.T. 817),
 19, 117, iv.
 Robinson v. Geisel, 19, vii.
 — v. Lynes, 14, iv.
 — v. Shaw, 14, ii.
 Rochdale Canal Co. v. Brewster,
 17, v.
 Rogers v. Harding, 18, i.
 Rose v. Bank of Australasia (63 L.J.
 Q.B. 504), 19, 141, iii.
 — v. Watson (70 L.T. 906), 19,
 118, iii.
 Ross v. White, 16, iii.
 Royal Bank of Scotland v. Totten-
 ham, 4, ii.
 Russell v. R., 18, viii.
 Rymer v. Stanfield, 28, ii.
 SADLER v. WORLEY (63 L.J. Ch. 537),
 19, 119, vi.
 Salaman, *re* (63 L.J. Ch. 664; 70 L.T.
 772), 19, 142, iv.
Salthurn, the, 24, iii.
 Sanders, *e. p.*; *re* S., 3, i.
 Sbuteaga v. Attwool, 23, i.

Scholfield v. Earl of Londesborough, 3, iii.
 Securities Insurance Co., *re* (L.R. [1894] 2 Ch. 410), 19, 134, vi.
 Sheffield (Corporation of) v. Alexander, 13, i.
 Shenstone v. Hilton, 10, iii.
 Shoosmith, *goods of* (70 L.T. 809), 19, 70, ii.
 Sims v. Landray (63 L.J. Ch. 535; 42 W.R. 621), 19, 145, iv.
 Sir Titus Salt & Co.'s Application, *re*, 26, iv.
 Skinner v. Shew, 17, i.
 Smith v. Hancock (L.R. [1894] 2 Ch. 377), 19, 137, vi.
 — v. Mason (63 L.J. M.C. 201; 70 L.T. 909), 19, 138, v.
 — v. Lancaster (63 L.J. Ch. 668; 70 L.T. 870), 19, 139, vi.
 Smurthwaite v. Hannay, 19, vi.
 Snaith v. S., 29, iv.
 Somerset v. Land Securities Co., 5, v.
 Southampton (Sheriff of), *e. p.*; *re* Crook, 22, iv.
 Stelfox, *goods of*, 1, ii.
 Stephenson, *e. p.*; *re* Langtry (63 L.J. Q.B. 570), 19, 115, i.
 Stretton's Brewery v. Mayor, &c., of Derby (42 W.R. 583), 19, 98, iii.
 Sturgeon v. Lawrence, 18, iii.
 Sutton v. Grey (63 L.J. Q.B. 633), 19, 39, iii.
 Sydney (Council of) v. A.-G. of New South Wales, 4, iv.
 TEMPLE v. T., 22, v.
 Theta, *the*, 23, iii.
 Thomasset v. T., 10, v.
 Thorne-George v. Godfrey, 14, vii.
 Tullett v. Colville (63 L.J. Ch. 554; 1 L.T. 189), 19, 147, i.
 UNDERWOOD v. LEWIS (70 L.T. 833), 19, 142, v.
 Union S.S. Co. v. Claridge (63 L.J. P.C. 56), 19, 91, iii.

United Alkali Co. v. Simpson (71 L.T. 258), 19, 124, ii.
 VICTORIA, *e. p.*; *re* V. (L.R. [1894] 2 Q.B. 387; 70 L.T. 48), 19, 116, ii.
 WAINWRIGHT v. W., 29, v.
 Walker v. Lambeth Waterworks Co., 27, iii.
 Wallace v. Automatic Machines Co. (L.R. [1894] 2 Ch. 547; 63 L.J. Ch. 598; 70 L.T. 852), 19, 119, v.
 Wallasey Brick and Land Co., *re* (70 L.T. 870), 19, 120, v.
 Walsh v. The Queen (63 L.J. P.C. 52), 19, 77, v.
 Warren v. Murray, 12, iii.
 Wegg-Prosser v. Evans (42 W.R. 639), 19, 126, i.
 West Ham Guardians v. Bethnal Green Churchwardens (70 L.T. 818; 42 W.R. 573), 19, 133, i.
 West London, &c., Building Society, *re* (70 L.T. 796), 19, 117, iii.
 Wieland v. Bird, 30, ii.
 Wigram v. Buckley, 15, vii.
 Williams v. Knight; *re* Hodson (L.R. [1894] 2 Ch. 421; 63 L.J. Ch. 609; 71 L.T. 77), 19, 125, iii.
 —, Torrey and Field v. Knight, 23, iv.
 Wilson v. McIntosh (63 L.J. P.C. 49), 19, 119, iii.
 —, *e. p.*; *re* Dunhill, 2, v.
 Winkle, *re* (L.R. [1894] 2 Ch. 519; 63 L.J. Ch. 541), 19, 128, iv.
 Winnipeg Street Railway Co. v. W. Electric Railway Co., 21, i.
 Wood v. Cooper, 12, i.
 Worcester Bank v. Firbank (63 L.J. Q.B. 542), 19, 97, vi.
 X., *re*, 13, iv.
 YORKSHIRE COUNTY COUNCIL v. HOLMFIRTH SANITARY AUTHORITY (71 L.T. 217), 19, 131, vi.

Quarterly Digest

OF

ALL REPORTED CASES,

IN THE

LAW REPORTS, LAW JOURNAL REPORTS, LAW TIMES
REPORTS, AND WEEKLY REPORTER,

FOR AUGUST, SEPTEMBER, AND OCTOBER, 1894, AND IN
THE "WEEKLY REPORTER" FOR JULY.

By C. H. LOMAX, M.A., of the Inner Temple,
Barrister-at-Law.

Administration:—

- (i.) **Ch. D.**—*Specific Legacy—Incumbrance on—General Charge of Debts.*—When the general personal estate is insufficient to pay a testator's debts, a specific legatee of a part of the estate which is subject to an incumbrance created by the testator must, as between himself and other specific legatees and devisees, bear the burden of it; and a general direction for the payment of debts, though amounting to a charge of debts on the real estate, does not alter the incidence of that burden.—*Le Bas v. Herbert*, 63 L.J. Ch. 662.
- (ii.) **P. D.**—*Bond—Sureties dispensed with.*—In the case of an estate where there were no debts, and it appeared that nothing could come to the hands of the administratrix except her own share, a receiver having been appointed, who had given security, the Court dispensed with sureties to the administration bond.—*In the goods of Stelfox*, 70 L.T. 814.
- (iii.) **P. D.**—*Creditor.*—The fact that the next-of-kin of an intestate was a lady of over eighty years of age, who had held no communication with the deceased, and that the estate was said to be insolvent, held, to be insufficient ground for passing over the next-of-kin and granting administration to a creditor.—*In the goods of Malkin*, 70 L.T. 811.
- (iv.) **P. D.**—*Representative of Next-of-Kin—Citation—Probate Act, 1857, s. 73.*—A grant may be made to the representative of the next-of-kin without citing a person entitled in distribution.—*In the goods of Kinchella*, L.R. [1894] P. 264; 71 L.T. 263.

- (i.) **Ch. D.—Receiver and Manager—Business—Indemnity—Conveyance—Fixtures—Bill of Sale.**—A receiver and manager appointed in an administration to manage the testator's business in succession to the executor is entitled, in priority to the testator's creditors, to be indemnified against liabilities incurred in carrying on the business, whether the will does or does not contain power to carry it on. A conveyance of land expressly passing trade fixtures is not a bill of sale of such fixtures.—*Brooke v. Brooke*, L.R. [1894] 2 Ch. 600.
- (ii.) **P. D.—Will Annexed—Sureties.**—Testator, a domiciled German, left to his widow everything which he could dispose of by the law of Germany. He left considerable property in this country, and his debts had been paid. Upon application by the son, the duly constituted attorney of the widow, who filed a written consent, the Court refused to dispense with sureties to the administration bond, or to reduce the amount of the bond to a nominal sum.—*In the goods of Blank*, 70 L.T. 810.

Arbitration :—

- (iii.) **C. A.—Arbitration—Disqualification—Bias—Named Arbitrator.**—Where parties to a contract have agreed to refer disputes to a named arbitrator, the rule applying to a person holding judicial office, that he ought not to hear cases in which he may have a bias, does not apply. To disqualify such an arbitrator there must be circumstances which establish at least a probability that he will in fact be biased. Where, in a contract for the execution of works, the arbitrator named is a servant of one of the parties, he is not disqualified by the mere fact that under the terms of the submission he may have to decide disputes involving the question whether he has himself acted with due skill in advising his employers.—*Eckersley v. Mersey Docks Board*, L.R. [1894] 2 Q.B. 667.

Army Act :—

- (iv.) **Q. B. D.—Regimental Equipments—Possession of—Arrest without Warrant—Army Act, 1881, s. 156, sub-ss. 1, 2, 4.**—The police have authority at their discretion to take into custody or summon any person found in possession of regimental equipments, and taking such person into custody instead of summoning him is no ground for an action for false imprisonment.—*Laws v. Read*, 68 L.J. Q.B. 683.

Bankruptcy :—

- (v.) **Q. B. D.—Appeal—Divisional Court.**—Where a judge of the High Court for the time being exercising bankruptcy jurisdiction, refuses to extend the time within which the official receiver should advertise a receiving order made in the county court and under appeal, an appeal from such judge's decision should be brought before a Divisional Court constituted to hear appeals from orders of county courts in bankruptcy matters.—*E. p. Wilson; in re Dunhill*, L.R. [1894] 2 Q.B. 554.
- (vi.) **Q. B. D.—Goods taken in Execution—Title of Trustee—Bankruptcy Acts, 1883, ss. 45, 46; 1890, ss. 1, 11.**—To entitle an execution creditor to retain the benefit of his execution as against the trustee in bankruptcy, the execution must be completed either by sale or receipt of the amount of the levy before the sheriff has been in possession twenty-one days, otherwise his title may be defeated by the act of bankruptcy committed in suffering the seizure, of which the creditor must be taken to have notice.—*Figg v. Moore*, L.R. [1894] 2 Q.B. 690; 71 L.T. 232.

- (i.) **Q. B. D.—Petition—Proof.**—Upon the hearing of an opposed petition the affidavit of verification cannot be used in proof of any matters in the petition, and the petitioner should be provided with proof of all the essential matters therein, for the debtor will usually be allowed to require such proof, whether mentioned in his notice to dispute or not, unless it appear that such objections are merely dilatory.—*Sanders v. p. ; re Sanders*, 71 L.T. 236 ; 42 W.R. 650.
- (ii.) **Q. B. D.—Proof—Disclaimer—Damages—Measure of.**—In cases of proof for injury sustained by the operation of a disclaimer, the measure of damages is the amount lost by the loss of the contract disclaimed, subject to deductions for any advantages which the party proving may have gained by the disclaimer.—*E. p. National Insurance Co. ; in re Hallett*, 42 W.R. 651.

Bill of Exchange:—

- (iii.) **Q. B. D.—Accommodation Bill—Fraudulent Alteration—Liability of Acceptor.**—The defendant accepted for the accommodation of the drawer, a bill for £500 drawn upon paper bearing a stamp sufficient to cover £4,000. The bill was complete when he signed it, and the drawer afterwards fraudulently altered it into a bill for £3,500, the bill having been so drawn as to leave room for the necessary interpolations. He negotiated the bill, and the plaintiff held it for value and in good faith. *Held*, that the defendant was not liable for the amount of the altered bill, on the ground of negligence in accepting the bill so drawn as to admit of the alteration ; but, that, as the alteration was “not apparent,” he was, under sect. 64 (1) of the Bills of Exchange Act, 1882, liable for the amount of the bill as originally accepted. *Held*, also, that as the bill was not “issued” for stamp purposes at the time of the alteration, it did not become a new bill requiring a fresh stamp.—*Scholfield v. Earl of Lonsborough*, L.R. [1894] 2 Q.B. 660 ; 63 L.J. Q.B. 649 ; 71 L.T. 86.
- (iv.) **C. A.—Dishonoured—Holder—Action—Days of Grace—Bills of Exchange Act, 1882, ss. 14, 19, 47.**—The holder of a dishonoured bill of exchange cannot sue on it till after the expiration of the days of grace.—*Kennedy v. Thomas*, L.R. [1894] 2 Q.B. 759 ; 71 L.T. 144 ; 42 W.R. 641.

Bill of Sale.—See Administration, p. 2, i.

Building Society:—

- (v.) **Ch. D.—Instrument of Dissolution—Variation of Rights of Members—Building Societies Act, 1874, s. 32.**—The members of a building society may, by an instrument of dissolution, vary the rights of members under the rules by a provision in the instrument that members who have given notice of withdrawal shall have no preference or priority over those who have not given such notice. Upon such an instrument taking effect advanced members may be compelled forthwith to pay up the balance due on their securities.—*Kemp v. Wright*, L.R. [1894] 2 Ch. 462.
- (vi.) **Ch. D.—Mortgage—Postponement of Security—Ultra Vires.**—The rules of a building society, which had exhausted its borrowing powers, provided that no property should be deemed a sufficient security for an advance which should be subject to a previous mortgage otherwise than to the society ; but the directors had power to release a portion of a mortgaged estate, if satisfied that the remainder was sufficient. A sum of over £6,000 had been advanced to H., a member, on certain houses. The directors needed money, and by an arrangement, carried

out by deed, H., mortgaged the houses for £6,000, the society joining to release and postpone its charge. The £6,000 was handed to the society in part discharge of its debt. All the costs were paid by the society. *Held*, that such last-mentioned mortgage was *ultra vires*, and not binding on the society, as being outside the powers of the directors, and not being capable of being upheld as a realization of their security as mortgagees.—*Portsea Island Building Society v. Barclay*, L.R. [1894] 3 Ch. 86; 71 L.T. 82.

Canal:—

- (i.) **C. A.**—*Right of Support—Mines—Compensation.*—The Company's Act provided that the right to work minerals should be reserved to the owners, and that if the owners should work so as in the opinion of the company to endanger the canal, or in the opinion of the owners to endanger the mines, the company should have power to purchase the minerals. Certain owners gave the company notice to treat for the purchase of coal requisite to be left for the security of the canal, and brought an action for a declaration that they were entitled to have satisfaction paid for the same. The action was referred, and the arbitrator found that the working would not injure the mines, but would cause a subsidence of the canal, which would not interfere with the navigation, but would necessitate slight repairs. The company offered to undertake not to object to the working, or to make any claim in respect of damage to the canal. *Held*, that on such undertaking being given the mine-owners were not entitled to have the satisfaction claimed.—*Chamber Colliery Co. v. Rochdale Canal Co.*, L.R. [1894] 2 Q.B. 632.

Cheque:—

- (ii.) **C. A.**—*Post-dated—Admissibility in Evidence—Stamp Act, 1891, ss. 4, 38.*—A post-dated cheque, stamped as a cheque, is admissible in evidence in an action brought by the holder after the date of the cheque, the test being whether the instrument appears when tendered in evidence to be sufficiently stamped.—*Royal Bank of Scotland v. Tottenham*, L.R. [1894] 2 Q.B. 715; 71 L.T. 168.

Colonial Law:—

- (iii.) **P. C.**—*British Columbia—"Settler"—Crown Lands.*—A right of settlement under the Land Act, 1875, of British Columbia, and the Consolidating Acts, can only be obtained in respect of unoccupied, unsurveyed and unreserved crown lands, and not in respect of any land reserved as a town site; and there is nothing in the Island Railway Act, 1883, giving any further right of settlement, or any new or extended sense to the word "settler."—*Hoggan v. Esquimaux Railway Co.*, L.R. [1894] A.C. 429; 70 L.T. 888.
- (iv.) **P. C.**—*New South Wales—Crown Lands—Dedication—Permanent Common—Inclosure—Public Parks Act, 1854—Crown Lands Alienation Act, 1861, s. 5.*—A tract of land was duly dedicated as "permanent common" under the latter Act, and the Municipal Council of Sydney were appointed trustees thereof. The council let a portion on lease to certain persons, who inclosed it, and used it for shows and sports, making a charge for admittance. *Held*, that the dedication of the land did not create a common of pasturage, and that the use of the land leased was not inconsistent with the dedication, and could not be restrained at the suit of the Attorney-General.—*Municipal Council of Sydney v. Attorney-General of New South Wales*, L.R. [1894] A.C. 444; 71 L.T. 80.

Company:—

- (i.) **Ch. D.—Application for Shares—Verbal Withdrawal—Notice—Clerk in Office.**—An application for shares cannot be verbally withdrawn. Where a notice is given to a clerk of the company, at its registered office, within office hours, and in the absence of the secretary, the inference, in the absence of evidence to the contrary, will be that the clerk was so far in charge that he can be deemed to have authority to receive the notice.—*In re Brewery Assets Co.*, 68 L.J. Ch. 635.
- (ii.) **C. A.—Director—Qualification Shares—Agreement to Take—Acting.**—The articles of a company fixed a period within which a director was to acquire his qualification shares, but empowered him to act before so doing. *Held*, that the fact that a director acted as such was not evidence of an agreement to take the shares, and that if he resigned within the period fixed for acquiring them, he was under no obligation to take them.—*In re R. Bolton & Co.*, 71 L.T. 284.
- (iii.) **Ch. D.—General Meeting—Chairman—Power of.**—It is not within the power of the chairman at a general meeting to dissolve the meeting at his own pleasure. His function is to preserve order, and to see that the sense of the meeting is properly ascertained with respect to any question.—*National Dwellings Society v. Sykes*, 42 W.R. 696.
- (iv.) **Ch. D.—Debentures—Blanks in—Invalid—Equitable Contract.**—A company having issued debenture bonds, obtained a loan from a bank, giving, as collateral security, debenture bonds in which the name of the obligee was omitted, blanks being left for the name. There was a minute of a resolution connected with the transaction, and a covering deed securing the debenture bonds. *Held*, that although the bonds were invalid at law, there was a good contract with the bank to issue valid debentures (the terms of which contract could be gathered from the minute of the resolution, the debentures, and the covering deed), and that the bank was entitled to share the benefit of the covering deed.—*Davis v. Martin*, 71 L.T. 115; 42 W.R. 600.
- (v.) **Ch. D.—Mortgage Debenture Acts, 1865, 1870—Deposit of Securities—Land Registry—Right of Receiver.**—The Court can direct the registrar of the Land Registry to hand over deeds, securities, and documents deposited with him under the Acts above-mentioned, to a receiver appointed under those Acts, when such handing over is necessary for carrying out the purposes of the Acts.—*Somerset v. Land Securities Co.*, 42 W.R. 623.
- (vi.) **Ch. D.—Winding-up—Supervision Order—Investigation—Companies Act, 1862, ss. 115, 138, 151.**—After the presentation of a winding-up petition the company went into voluntary liquidation, and the petition was amended so as to ask for a supervision order, the petitioners asking for a public examination. *Held*, that a supervision order should be made, the liquidator undertaking to investigate and report whether a public examination was necessary; if the report should be against the examination any creditor or contributory to be at liberty to apply.—*In re Land Securities Co.*, 42 W.R. 624.
- (vii.) **Ch. D.—Winding-Up—Distress for Rent Accrued Since.**—In order to entitle a landlord to distrain for rent due since the winding-up, the liquidator must have adopted the contract or used the property for the beneficial winding-up; it is not enough that he has derived an indirect benefit therefrom.—*In re House and Land Investment Trust; c. p. Smith*, 42 W.R. 572.
- viii.) **Ch. D.—Winding-Up—Practice—Statement of Affairs—Companies (Winding-Up) Act, 1890, s. 7.**—Before ordering a person to submit a statement of affairs, the registrar should satisfy himself that the

person has the materials to do so. It is better, however, that the application should be made to the judge.—*In re Columbian Gold Mines*, 42 W.R. 624.

- (i.) **C. A.**—*Winding-Up—Public Examination—Official Receiver—Report of—Fraud—Case of Suggested.*—Held, by Ch. D., that where the official receiver's report suggests a *prima facie* case of fraud against any promoter or director, all the promoters and directors, whether implicated or not, might be summoned for examination, and order made accordingly. *Ordered*, by C. A., as regarded the persons consenting, that such order be discharged, and that they should be examined before the Court, with liberty for the official receiver or any creditor or contributory to take part, putting such questions only as should be allowed by the Court.—*In re New Zealand Loan and Mercantile Agency Co.*, 71 L.T. 180.
- (ii.) **Ch. D.**—*Winding-Up—Costs—Report of Official Receiver—Third Counsel—Refreshers—Consultations—R.S.C.*, 1883, O. lxx., rr. 27, 48.—In taxation of costs between party and party on a summons under sect. 10 of the Companies Act, 1890, the report of the official receiver is not to be treated as a pleading nor as an affidavit, and the costs of instructions for preparing it cannot be allowed. Such summons is not the trial of an action upon notice, and the costs of instructions for brief cannot be allowed. Upon the hearing, the costs of a third counsel may be allowed. More than one consultation fee will not be allowed merely on the ground that the hearing took more than one day. Refreshers may be allowed in the registrar's discretion.—*In re Anglo-Austrian Printing and Publishing Union*, L.R. [1894] 2 Ch. 622; 63 L.J. Ch. 632; 42 W.R. 648.
- (iii.) **Ch. D.**—*Winding-Up—Contributory—Underwriting Agreement.*—Underwriters agreed with the vendor to a company for a certain consideration, at any time within three months if called upon by him, to subscribe or find subscribers for not exceeding 1,000 shares. If the public subscribed, the liability of the underwriters was to be reduced, and the agreement provided that it was to be irrevocable, and was to authorise the vendor to subscribe for the shares in the names of the underwriters if they should fail to subscribe or find subscribers. *Held*, that the agreement did not amount to an application for shares, and that shares could not be allotted to the underwriters who had never been called upon to subscribe or find subscribers.—*In re Harvey's Oyster Co.*; *e. p. Ormerod*, L.R. [1894] 2 Ch. 474; 63 L.J. Ch. 578; 70 L.T. 795; 42 W.R. 701.
- (iv.) **Q. B. D.**—*Winding-up—"Just and Equitable"*—*Companies Act*, 1862, s. 79, sub-s. 5.—On a petition by three shareholders to wind up an industrial society, the county court judge found as a fact that the society was solvent as regards outside creditors, but that it could only continue to carry on business by a suspension of the right to withdraw share capital. The rules empowered the committee to suspend such right for a limited time. The petitioners had given notice of withdrawal, but the committee had exercised their right of suspension by successive resolutions for nearly two years. The winding-up was opposed by a majority of the shareholders. *Held*, that it was not "just and equitable" that the society should be wound-up.—*In re Horsham Industrial and Provident Society*, 70 L.T. 801.
- (v.) **Ch. D.**—*Winding-up—Supervision—Liquidator—Security.*—The Court will require security from the liquidator of a company appointed by the Court after the making of a supervision order, although no security was given by the liquidator appointed in the voluntary liquidation.—*In re Hampshire Land Co.*, L.R. [1894] 2 Ch. 632 63 L.J. Ch. 677; 42 W.R. 601.

Contract:—

- (i.) **Q. B. D.—Hire-Purchase Agreement—Unpaid Instalments—Guarantee.**—Plaintiffs, as “owners” of omnibuses agreed to let them to G., the “hirer,” who paid a sum down, the balance to be paid by instalments. In case of default the owners were to have power to seize the chattels, retaining all money already paid. Default was made and the owners seized. In consideration of the chattels being returned to the hirer, the defendant paid the amount due, and guaranteed the remaining instalments. Upon further default being made the owners again seized the chattels, and sued the guarantor for the amount of the instalments unpaid. They recovered judgment in the county court, and the defendant appealed. *Held*, that the agreement was determined when the plaintiffs seized the chattels. By doing so they lost their right to sue G., and therefore could not recover against the guarantor. They could not resume possession, and still recover the unpaid instalments. —*Hewison v. Ricketts*, 71 L.T. 191.
- (ii.) **Ch. D.—Option to Purchase Land—Intestacy—Conversion.**—A., the owner of a house, demised it to C. for the life of A., and covenanted that after A.'s death C. should have the option of purchasing it for £750. A. died intestate, and C. exercised his option. *Held*, that as between A.'s real and personal representatives the exercise of the option effected a conversion.—*Isaacs v. Reginall*, 42 W.R. 685.
- (iii.) **Q. B. D.—Restraint of Trade—Contract partly in Writing—Parol Evidence.**—Parol evidence of the consideration is admissible in regard to written contracts in restraint of trade just as it is in regard to other simple contracts.—*Cooper v. Southgate*, 63 L.J. Q.B. 670.

Copyhold:—

- (iv.) **C. A.—Seizure Quousque—Lapse of Time—Implied Admittance—Limitations.**—Decision of Q. B. D. (see Vol. 19, p. 80, iv.) affirmed.—*Ecclesiastical Commissioners v. Parr*, L.R. [1894] 2 Q.B. 420; 71 L.T. 65; 42 W.R. 561.

Copyright:—

- (v.) **C. A.—“Chart or Plan”—Pattern.**—Decision of Ch. D. (see Vol. 18, p. 118, vii.) reversed.—*Hollinrake v. Truswell*, 63 L.J. Ch. 719.
- (vi.) **C. A.—Infringement—Picture—Copy of Reproduction.**—Decision of Ch. D. (see Vol. 19, p. 122, i.) reversed.—*Hanfstaengl v. Empire Palace; H. v. Newnes*, 63 L.J. Ch. 681; 70 L.T. 854; 42 W.R. 681.
- (vii.) **H. L.—Railway Time-tables—Circular Tours.**—The mere publication in any particular order of the time-tables issued by railway companies cannot be a matter of copyright, if nothing more has been done than to copy them in their order, leaving out such stations as the author thinks fit. But, abridged information of the train service in connection with circular tours of a locality may be matter of copyright.—*Leslie v. Young*, L.R. [1894] A.C. 335.
- (viii.) **Ch. D.—Registration—“Book”—“Separately Published”—Copyright Act, 1842, ss. 2, 3, 18, 19.**—J. agreed with the publishers of the paper W. to write a series of stories under the title “Birds of the Night.” He was paid separately for each story, but did not part with the copyright. The first story appeared in the W. on September 8th, and the eleventh, called the “Cabman’s Story,” on November 19th. The latter story appeared in the paper T. after that date. J. then registered his book “Birds of the Night,” stating the first publication to have been on September 8th. *Held*, that there had been a separate publication of the stories, and that the registration was accurate, and that J. was entitled to an injunction and damages.—*Johnson v. Newnes*, 71 L.T. 280.

County Court:—

- (i.) **Q. B. D.—Appeal—Judge's Note—Costs—Shorthand Note—City of London Court.**—The practice of the City of London Court is that an official shorthand writer takes notes of the proceedings, and the parties can obtain a transcript of the shorthand note on payment. On hearing of an appeal from the Court the appellant used the shorthand note of the evidence and summing-up. A new trial was ordered on the ground of misdirection. *Held*, that the case was one in which the judge could not be requested to make a note at the time when the point arose, and that the judge was therefore not bound to furnish a copy of his note; that the appellant was therefore entitled to use the transcript of the shorthand note, and that the costs of so much of it as was necessary should be allowed; that in the present case a note of the evidence was necessary, but that as a general rule, in jury cases, only the costs of the note of the summing-up ought to be allowed.—*Barber v. Burt*, L.R. [1894] 2 Q.B. 437; 63 L.J. Q.B. 700; 71 L.T. 295; 42 W.R. 572.
- (ii.) **Q. B. D.—Practice—Default Summons—Affidavit—Assignee—County Courts Act, 1888, s. 86—County Court Rules, Form 14 B.**—The form of affidavit prescribed by the rules in accordance with the section above-mentioned, is not applicable to the case of a default summons taken out by the assignee of a debt. The plaintiff must depose to facts within his own knowledge. There is good reason why this summary procedure should not be extended to cases of assignment, but confined to cases where the facts are within the knowledge of the person deposing to them.—*Reg. v. Pontypool Judge*, 63 L.J. Q.B. 702; 71 L.T. 17.
- (iii.) **Q. B. D.—Practice—Solicitor—Clerk—Right of Audience.**—The clerk of the solicitor of a party in a county court action, though he be a duly qualified solicitor and has had the general management of the proceedings in the action, is not "a solicitor acting generally in the action" for the client within sect. 73 of the County Courts Act, 1888, and is not entitled to address the Court without the leave of the judge.—*Reg. v. Oxfordshire Judge*, L.R. [1894] 2 Q.B. 440; 63 L.J. Q.B. 689; 70 L.T. 874; 42 W.R. 603.

Covenant:—

- (iv.) **C. A.—Construction—"Similar Business."**—A lease granted to the Aerated Bread Company contained a covenant that they would not carry on the business of a restaurant keeper similar to that carried on by the keeper of a certain public-house to which a fully licensed restaurant was attached. The company carried on their business which included the sale of cold meat, without objection from the lessors. They assigned their lease to the defendant, who sold in addition soups, vegetables, and hot meats. He had no licence, and his establishment looked like a confectioner's shop. *Held*, that the defendant's business was "similar" within the meaning of the covenant, but that he was entitled to carry on business in the same way as the assignors.—*Drew v. Guy*, L.R. [1894] 3 Ch. 25; 63 L.J. Ch. 547; 71 L.T. 220.

Criminal Law:—

- (v.) **C. C. R.—False Pretences—Form of Indictment—Expert Evidence—28 and 29 Vict., c. 18, s. 8.**—An indictment for obtaining a cheque by false pretences charged that the defendant by inserting in a newspaper a fraudulent advertisement (setting it out) did falsely pretend to the

Queen's subjects that (setting out the pretence) whereby he obtained from A. a cheque. *Held*, that the indictment was good, although it did not allege that the false pretence was made to a particular person. A witness giving evidence as to disputed handwriting, need not be a professional expert, or a person whose skill has been gained in the way of his profession or business.—*Reg. v. Silverlock*, L.R. [1894] 2 Q.B. 766.

- (i.) **P. C.**—*Summing up—Prisoner Competent to give Evidence.*—It is no ground for interfering with the verdict of a jury in a criminal case that the judge in his summing up commented upon the fact that the prisoner might have given evidence in his own behalf, but had not done so.—*Kops v. The Queen*, 70 L.T. 890.

Dedication :—

- (ii.) **C. A.**—*Surface of Land—Soil Beneath.*—A landowner who dedicates land to the public to pass and re-pass over it, dedicates the surface only for the public to use as a way, and the soil beneath belongs to him as before. By an agreement, afterwards confirmed by Act of Parliament, between the lord of the manor and his freehold tenants, it was declared that a certain promenade which formed part of the waste of the manor should remain always open and free to the public, in the manner the same then was or lately had been used. The public had from the earliest times a right to pass and re-pass on foot over the said promenade. *Held*, that the soil beneath the promenade was not a "street" repairable by the inhabitants at large within the Public Health Act, 1875, and that it was vested in the lord of the manor, and that the corporation was not entitled without his consent to excavate and build a convenience beneath the promenade.—*Baird v. Mayor, &c., of Tunbridge Wells*, 71 L.T. 211.

Easement :—

- (iii.) **Ch. D.**—*Ancient Lights—Time from which Prescription Runs.*—In an action to restrain obstruction to light and air it appeared that the plaintiff's house was finished externally, the openings for the windows being made, and the roof completely slated, more than twenty years before the issue of the writ, but that the house was not fit for habitation, the window frames and sashes were not in, or the floors laid, till less than that period before the issue of the writ. *Held*, that the windows were ancient lights and entitled to protection.—*Collis v. Laughier*, 71 L.T. 226.

Ecclesiastical Law :—

- (iv.) **Consistory Court of London.**—*Faculty—Chancel Gates.*—A faculty for the erection of chancel screen gates was granted, the Court being satisfied that the erection would be of utility.—*Vicar of St. James, Norland v. Parishioners*, L.R. [1894] P. 256.

Executor :—

- (v.) **P. C.**—*Action against by Creditor.*—The rule that a creditor of the deceased cannot sue the executor unless he has either administered or proved, debars a creditor from suing an executor who has applied for probate but has taken no further steps, although the Court has ordered that probate should be granted on his taking the usual oath of office.—*Mohideen Hadjar v. Pitchey*, L.R. [1894] A.C. 437; 71 L.T. 99.

- (i.) **P. D.—Intermeddling**—An intermeddling executor is bound to prove, and where, after citation, he has failed to do so, a peremptory order will be made, upon motion, calling upon him to prove within a limited time.—*In the goods of Lister*, 70 L.T. 812.

Extradition :—

- (ii.) **Q. B. D.—Evidence—Accomplice—Corroboration—Two Charges—One Commitment—Political Offence.**—In the case of a fugitive criminal accused of an extradition crime, when the evidence of an accomplice is not corroborated in any material particular, such want of corroboration is not conclusive against the commitment. There may be one commitment for two or more offences. An attempt by an individual, claiming to be an Anarchist, to blow up public buildings is not "an offence of a political character" within the exemption of the Extradition Act, 1870.—*In re Meunier*, L.R. [1894] 2 Q.B. 415; 63 L.J. M.C. 198; 42 W.R. 637.

Factor :—

- (iii.) **Q. B. D.—Hiring Agreement—Delivery by Hirer for Sale—Factors Act, 1889, s. 9.**—The plaintiffs let a piano by a hiring agreement, the piano on payment of all instalments to become the property of the hirer. The hirer delivered the piano to the defendant, an auctioneer, for sale, some instalments being unpaid. The defendant sold it and paid over the proceeds. He received it *bonâ fide* without notice of the plaintiffs' rights. In an action for conversion. *Held*, that the defendant was protected by the section above mentioned.—*Shenstone and Co. v. Hilton*, L.R. [1894] 2 Q.B. 452; 63 L.J. Q.B. 484.

Guarantee :—

- (iv.) **C. A.—Verbal Promise to Indemnify—Statute of Frauds.**—Defendant gave plaintiff a written guarantee for £5,000, on consideration of his allowing C. & Co. to draw on him. C. & Co. increased their overdraft, and defendant verbally agreed to increase his guarantee to £6,000 on consideration of an overdraft up to £10,000 being allowed. *Held*, that this ought to have been in writing. Afterwards, the defendant verbally promised to provide funds to meet a batch of bills of C. & Co. then falling due, and he afterwards gave a similar promise with respect to another batch. *Held*, that these undertakings were not guarantees, but promises to indemnify plaintiff against the bills, and need not be in writing.—*Guild v. Conrad*, 71 L.T. 140; 42 W.R. 642.

Husband and Wife :—

- (v.) **C. A.—Divorce—Children—Maintenance and Education.**—The jurisdiction under the Divorce Acts to make orders respecting the custody, maintenance, or education of children, may be exercised during the whole period of infancy.—*Thomasset v. Thomasset*, 71 L.T. 148; 42 W.R. 658.
- (vi.) **P. D.—Divorce—Molestation—Injunction.**—The Court granted an injunction to restrain the respondent in a divorce suit from molesting the petitioner by going to and remaining in her house, contrary to her expressed wish.—*Northledge v. Northledge*, 70 L.T. 816.
- (vii.) **C. A.—Nullity of Marriage—Alimony.**—In a suit for nullity of marriage, a *de facto* marriage being established, the Court has jurisdiction to grant alimony *pendente lite*; and the suit continues until the decree is made absolute.—*Foden v. Foden*, 71 L.T. 279; 42 W.R. 689.

Infant:—

- (i.) **C. A.**—*Contract—Insurance Society—Employers' Liability Act, 1880.*—Decision of Q. B. D. (see Vol. 19, p. 125, v.) affirmed.—*Clements v. L. & N.W.R.*, L.R. [1894] 2 Q.B. 482; 70 L.T. 896; 42 W.R. 663.
- (ii.) **C. A.**—*Maintenance—Gift to Class attaining Twenty-one—Conveyancing Act, 1881, s. 4.*—Decision of Ch. D. (see Vol. 19, p. 125, vi.) affirmed.—*Holford v. Holford*, L.R. [1894] 3 Ch. 30; 63 L.J. Ch. 687; 70 L.T. 777; 42 W.R. 563.

Joint Wrongdoers:—

- (iii.) **H. L.**—*Damages—Joint and Several—Payment by One—Contribution.*—In an action for negligence against A. and B. a joint and several decree for damages and costs was given against the defendants. A. paid the whole, took an assignment of the decree, and sued B. for contribution. B. denied A.'s claim for relief on the ground that they were joint wrongdoers. *Held*, that A. was entitled, as the foundation of his claim rested in a decree which created a civil debt.—*Palmer v. Wick and Pulteney Town Steam Shipping Co.*, L.R. [1894] A.C. 318; 71 L.T. 168.

Landlord and Tenant:—

- (iv.) **H. L.**—*Compensation for Improvements—Notice—Determination of Tenancy.*—A lease provided that the tenant should quit the houses, grass, and fallow land at Whitsunday, and the arable land at the separation from the ground of the year's crop. After quitting possession of the houses, &c., at Whitsunday, he gave notice of a claim for improvements. *Held*, that there were distinct terms of removal, and that a notice given within the statutory period of the separation of the crop from the ground was sufficient.—*Black v. May*, L.R. [1894] A.C. 368.
- (v.) **C. A.**—*Nuisance—Dynamo—Vibration—Derogation from Grant—Measure of Damages.*—The vibration from dynamo engines on the land of the lessor adjoining a demised house, made it necessary to pull down the house. At the date of the lease, the lessee knew of the dynamo, and both parties knew that the house was unstable. *Held*, (1) that the lessee had a right of action; (2) that on the principle of derogation from a grant the lessor was estopped from saying that the house was unstable; (3) that in estimating damages, not only the loss of the term, but also all losses fairly attributable to the wrongful act should be considered.—*Grosvenor Hotel Co. v. Hamilton*, 63 L.J. Q.B. 661; 42 W.R. 626.
- (vi.) **Q. B. D.**—*Relief against Forfeiture—Bankruptcy—Under-lessee—Conveyancing Acts, 1881, s. 14; 1892, s. 4.*—Relief may be given to an under-lessee against a forfeiture owing to the bankruptcy of the lessee, although such relief could not have been given to the lessee himself. Such relief was given on terms that the under-lessee should enter into the covenants contained in the lease, and pay the rent thereby reserved, but that he should not be required to pay the increased rent which the premises were alleged to be worth.—*Wardens, &c., of Highgate School v. Sevell*, 71 L.T. 88.

Lands Clauses Act:—

- (vii.) **C. A. & Q. B. D.**—*Compensation—Tenancy Less than a Year—Lands Clauses Act, 1845, ss. 68, 85, 121.*—N. rented land from the Crown on a thirty years' lease, the Crown reserving the right to determine the tenancy as to any portion on three months' notice. The company gave notice to N. to treat as to a portion of the land, and the Crown

gave notice to determine the tenancy as to that portion. The magistrate awarded compensation to N. for the loss of the and taken, and also compensation for severance in respect of the remainder of the land. *Held*, that the magistrate had jurisdiction to assess compensation, but that compensation for severance could not be awarded.—*Bexley Heath Railway Co. v. North*, L.R. [1894] 2 Q.B. 579; 70 L.T. 903.

Lease:—

- (i.) **Ch. D.**—*Restrictive Covenants*—“*Building*”—“*Annoyance*.”—The plaintiff, by a lease made in accordance with a building scheme, demised a piece of land with the house thereon to A., who covenanted not to erect without licence any building other than a stable, and that he would not do anything on the premises which might be an annoyance to any tenant of the lessor. The defendant was the assignee of the lease. The plaintiff demised adjoining land to R., who covenanted to erect a house thereon, and entered into covenants similar to those in A.’s lease. These premises were assigned to F., who built a house thereon overlooking the defendant’s garden. The defendant erected a hoarding nearly sixty feet long and nearly twenty feet high close to the partition wall on his side thereof. *Held*, that the hoarding was a “building” within the covenant in the lease to A., and also an “annoyance” to F., a tenant of the lessor, and that an injunction to restrain its continuance must be granted.—*Wood v. Cooper*, 71 L.T. 222.

Licensing:—

- (ii.) **C. A.**—*Althouse—Renewal—Objection—Adjournments—Licensing Acts*, 1872, s. 42; 1874, s. 26.—Decision of Q. B. D. (see Vol. 19, p. 127, vi.) affirmed.—*Dakin v. Parker*, L.R. [1894] 2 Q.B. 556; 42 W.R. 625.

Limitations:—

- (iii.) **C. A.**—*Agreement for Lease—Possession under—Equitable Right to Lease*.—Under an agreement by the owners of land to grant leases of houses when erected by intending lessees, the latter became entitled to a lease of two houses at a peppercorn rent for a term of years. No lease was ever granted, but the intending lessees remained in possession during the term under such circumstances that a Court of Equity, if applied to, would have granted specific performance of the agreement for a lease. *Held*, that during the term of years the statute did not begin to run against the owners of the land, inasmuch as they had not an effective right of entry or action for the recovery of the land.—*Warren v. Murray*, L.R. [1894] 2 Q.B. 648.
- (iv.) **C. A.**—*Bonds held as Security—Special Agreement*.—Decision of Ch. D. (see Vol. 19, p. 128, i.) reversed.—*McDermott v. Boyd*, 71 L.T. 146.
- (v.) **Ch. D.**—*Legacy Charged on Contingent Reversionary Interest—“Present Right to Receive”—Real Property Limitation Act*, 1874, ss. 1, 2, 8—*Charge*.—D., who died in 1823, devised his real estate upon trust for the benefit of M. for life, and subject thereto, in the events which happened, to the four children of E. as tenants in common in fee. X., one of them, who died in 1854, charged his debts by will on his real estate, and devised his real estate and his interest under the will of D. to Y. for life, and after her death charged the same with a sum of £8,000, which he gave to his children in equal shares. Y. died in 1880, and in this year part of their shares in the sum of £8,000 was paid to the children of X. No steps were taken to realise X.’s interest under the will of D., nor was any further payment or acknowledgment made in respect of the legacy of £8,000. M. died in 1893. *Held*, that

the "present right to receive" the £8,000 accrued in 1880, that the charge created by the will of X. gave a remedy by sale or mortgage, and not by foreclosure, and that the period of limitation was defined by sect. 8 of the Act and not by sects. 1 and 2.—*In re David Owen*, 71 L.T. 181.

See Solicitor, p. 25, i.

Local Government:—

- (i.) **Q. B. D.**—*Private Street Works—Objection by Frontagers—Sheffield Corporation Act*, 1890, ss. 52, 53, 54—*Private Street Works Act*, 1892, ss. 6, 7, 8.—The jurisdiction of a Court of Summary Jurisdiction upon the hearing of a frontager's objection to a private street work is not limited to the mode in which the proposed work is to be done; but the Court may decide that the work itself is unreasonable.—*Corporation of Sheffield v. Alexander*, 68 L.J. M.C. 206.
- (ii.) **Q. B. D.**—*Street—Expenses of Paving—Footway—Apportionment—Remedy of Frontager.*—A street was laid down and taken over by the local authority as regards the carriage-way, and declared by them to be a highway repairable by the inhabitants. The footways were not paved or taken over. Afterwards the local authority gave notice to the frontagers to pave the street, and in default executed the work and apportioned the cost. The defendant disputed his liability, but did not give notice disputing the apportionment under sect. 257 of the Public Health Act, 1875, nor did he appeal to the Local Government Board under sect. 268. The local authority sought to recover the amount summarily, but the justices dismissed the application. *Held*, that as the frontager was liable in respect of the work done to the footways, and so had no defence to the whole of the apportionment, the question became one of the amount of his liability, and that as he had not disputed the apportionment in the manner provided by the Act, it was conclusive against him, and that the justices ought to have made an order for the payment thereof.—*Mayor, &c., of Derby v. Grudgings*, L.R. [1894] 2 Q.B. 496; 68 L.J. M.C. 170.
- (iii.) **Ch. D.**—*Paving Expenses—Liability for—"Owner"—Common—Public Health Act*, 1875, ss. 4, 150.—The soil of a common was vested in the lord of the manor, subject to rights of turbary in favour of certain cottages, which rights had been held to be a charitable trust. *Held*, that the lord was "owner," and liable to contribute towards the expenses of paving a road abutting on the common.—*Meyrick v. Attorney-General*, 63 L.J. Ch. 657; 71 L.T. 122; 42 W.R. 614.

Lunatic:—

- (iv.) **C. A.**—*Committee—Powers of—Power of Sale under Settlement.*—X. had under a settlement power to sell the settled estates. He was incapable, through mental disease, of managing his affairs. His son, who had already been appointed to exercise certain powers on his behalf, applied for an order authorising him to exercise the power of sale. *Held*, that there was jurisdiction to make the order.—*In re X.*, L.R. [1894] 2 Ch. 415; 68 L.J. Ch. 613; 71 L.T. 139; 42 W.R. 657.
 - (v.) **C. A.**—*Not so Found—Committee—Powers of—Tenant for Life—Sale of Settled Land.*—Where a person has been appointed to exercise the powers of the committee of the estate of a tenant for life of a settled estate who is lawfully detained as a lunatic, the Court cannot authorise him to exercise on behalf of the lunatic the power of sale under the Settled Land Acts. To enable this to be done the lunatic should be so found by inquisition.—*In re Bagge*, L.R. [1894] 3 Ch. 416; 68 L.J. Ch. 612; 71 L.T. 138.
- See Will, p. 28, i.

Marriage Settlement :—

- (i.) **Ch. D.**—*After-acquired Property—Covenant to Settle—Property Accruing after Death of Husband.*—A marriage settlement contained a covenant to settle property of the wife acquired after the marriage “during the life of the wife.” She became entitled to property after the death of the husband. *Held*, that the covenant should be read as if the words “during the said intended coverture” had been inserted; that the language of the covenant being ambiguous the Court was entitled to read a recital in the settlement; but that, even apart from the recital, the covenant did not bind the property specified.—*Broughton v. Broughton*, L.R. [1894] 8 Ch. 76; 63 L.J. Ch. 671; 71 L.T. 186; 42 W.R. 634.
- (ii.) **Ch. D.**—*Construction—Children—Illegal Marriage.*—Two persons within the prohibited degrees went through the ceremony of marriage, and afterwards executed a settlement, whereby property was settled on trust for the children of the marriage. There were ten children, of whom the eldest was born one month after the execution of the settlement. *Held*, that such child could not take under the limitation in favour of the children of the marriage, or of the children of the lady by her husband, as there was not, at the date of the settlement, any evidence of reputation of paternity of the illegitimate child not yet born.—*Robinson v. Shaw*, L.R. [1894] 2 Ch. 573; 71 L.T. 79.

Married Woman :—

- (iii.) **C. A.**—*Costs—Sequestration—Restraint upon Anticipation—Married Women's Property Act, 1893, s. 2.*—An order for the payment of the costs of an unsuccessful appeal by a married woman a defendant in an action cannot be enforced by the issue of a writ of sequestration under the section above-mentioned, which only applies to some action commenced by the married woman or proceedings initiated by her, such as a petition or originating summons, and does not extend to appeals.—*Hood-Barrs v. Cathcart*, 71 L.T. 11.
- (iv.) **Q. B. D.**—*Contract before Marriage.*—The personal liability of a married woman at common law upon contracts made before marriage is not taken away by the Married Women's Property Act, 1892.—*Robinson v. Lynes*, L.R. [1894] 2 Q.B. 577; 71 L.T. 249.
- (v.) **C. A.**—*Execution Against—Separate Estate with Restraint—Income not Due—Married Women's Property Act, 1892, s. 1, sub-ss. 2, 4; s. 19.*—A judgment against a married woman cannot be enforced against any income of her separate estate, as to which she is restrained from anticipation, which is not due at the date of the judgment; and therefore, an order for a receiver of the income of such separate estate, which becomes due after the date of the judgment, cannot be made by way of equitable execution, though the income is due and in arrear when the order is applied for.—*Hood-Barrs v. Cathcart*, L.R. [1894] 2 Q.B. 559; 63 L.J. Q.B. 602; 70 L.T. 862 and 865; 42 W.R. 628.
- (vi.) **C. A.**—*Separate Estate—Sequestration—Arrears of Rent—Married Women's Property Act, 1893, ss. 1, 2.*—Decision of Ch. D. (*see* Vol. 19, p. 129, ii.) affirmed.—*Hood-Barrs v. Cathcart*, 71 L.T. 7; 42 W.R. 633.
- (vii.) **Ch. D.**—*Restraint upon Anticipation—Partial Removal—Costs—Married Women's Property Act, 1893, s. 2.*—A married woman, entitled to a life interest without power of anticipation, brought an action against her trustees, alleging breaches of trust. On her submitting to judgment, *held*, that she must pay the costs as between solicitor and client; and that the restraint on anticipation must be removed so far as was necessary to enable her to do so.—*Thorne-George v. Godfrey*, 71 L.T. 86.

Master and Servant:—

- (i.) **H. L.**—*Wages—Deductions for Sick Fund—Truck Acts, 1881; 1887.*—H. had been in the employment of the respondent, and, as a condition of her employment, had signed an agreement to become a member of a sick and accident club, and to subscribe a weekly sum thereto. Such sums were deducted weekly from her wages, and paid to the club. She was informed of the amount of such deductions when her wages were paid. *Held*, that the payments must be taken to have been made with her assent, and that she could not recover the same as illegal deductions.—*Hewlett v. Allen*, L.R. [1894] A.C. 383; 63 L.J. Q.B. 608; 71 L.T. 94; 42 W.R. 670.

Metropolis Management:—

- (ii.) **Q. B. D.**—*Dangerous Structure—Jurisdiction of Magistrate—Metropolitan Building Act, 1855, s. 73.*—A justice of the peace has jurisdiction to order the owner of a dangerous structure to take down, repair, or secure it, even though such structure is not adjacent to a highway, and consequently is not dangerous to the public.—*London County Council v. Herring*, L.R. [1894] 2 Q.B. 522.
- (iii.) **Q. B. D.**—*Temporary Wooden Structure—Erection for Sale—Licence—Metropolis Management Act, 1882, s. 13.*—The appellants erected on land adjoining their premises, and there exhibited for sale, a wood and iron bungalow. After five months it was sold and taken down. *Held*, that no licence for its erection from the London County Council was required.—*London County Council v. Humphreys*, L.R. [1894] 2 Q.B. 755; 63 L.J. M.C. 215; 71 L.T. 201.
- (iv.) **Q. B. D.**—*Streets—Widening—Compulsory Purchase—Part of House—Michael Angelo Taylor's Act, 1817, ss. 80, 82.*—A metropolitan local authority can, under the Act above-mentioned, take by compulsion part of a house for the purpose of widening the street, provided that the taking of such part will not involve a structural alteration of the whole house or necessitate an alteration in its business purposes. The question as to the character of the proposed alteration is one of fact, which must be found before the Court can decide whether or not the local authority can take part of the house.—*Gordon v. Kensington Vestry*, L.R. [1894] 2 Q.B. 742; 63 L.J. M.C. 193; 71 L.T. 196.

Mortgage:—

- (v.) **C. A.**—*Consolidation.*—Decision of Ch. D. (see Vol. 19, p. 130, ii.) affirmed.—*Minter v. Carr*, 63 L.J. Ch. 705.
- (vi.) **Ch. D.**—*Priority—Fund in Court—Stop Order—Life Interest—Capital and Income—Income not Mentioned in Order.*—A stop order was obtained by a mortgagee upon the share of his mortgagor in a fund in Court. The order did not refer to the dividends, but referred to mortgages which shewed that the mortgagor had only a life interest. *Held*, that the order affected the dividends, and gave the mortgagee priority over an earlier incumbrancer, who had not obtained a stop order.—*Mack v. Postle*, L.R. [1894] 2 Ch. 449; 63 L.J. Ch. 593; 71 L.T. 153.
- (vii.) **C. A.**—*Priority—Laches—Lis Pendens—Book Debts.*—The defendants assigned to the plaintiffs present and future book debts by way of mortgage. In 1892 the plaintiffs commenced a foreclosure action, which they registered as a *lis pendens*. They obtained a receiver, but gave no notice to the debtors of their proceedings or of their security. In 1893 the defendants assigned the same book debts to a bank by way of mortgage without notice of the plaintiffs' rights. The bank gave notice to the debtors. Afterwards the receiver claimed the debts.

Held, that the doctrine of *lis pendens* did not apply; and secondly that if it did, the plaintiffs had lost priority through their laches.—*Wigram v. Buckley*, 63 L.J. Ch. 689; 71 L.T. 287.

Negligence :—

- (i.) **C. A.**—*Water Company—Apparatus—Repair of—Power to do Works in Street.*—A water company had power under its Act to lay down, repair, and maintain works necessary to supply water. At the request and expense of the occupier of a house, the company laid down a service pipe to the house, in which they placed a stop-cock to regulate the supply. The stop-cock was protected by a guard-box let into the pavement, which had a lid. The hinges of the lid being out of repair, the plaintiff tripped over them and was injured. The apparatus could not be repaired without breaking up the street. *Held*, that, whether the apparatus belonged to the company or the occupier, the company, who alone had the power to break up the street to repair it, were responsible for its repair, and therefore liable to the plaintiff.—*Chapman v. Fylde Waterworks Co.*, L.R. [1894] 2 Q.B. 599.

Novation.—*See Solicitor*, p. 25, i.

Nuisance :—

- (ii.) **Q. B. D.**—*Highway—Steam-roller.*—The owners of a steam-roller are liable in damages if it is a nuisance to a person using the highway. Compliance with statutory regulations, and absence of negligence are not a defence. The question whether a steam-roller is a nuisance dangerous to the public is one of fact, depending on the circumstances of the case.—*Jeffery v. St. Pancras Vestry*, 63 L.J. Q.B. 619.

Partnership :—

- (iii.) **C. A.**—*Dissolution Action—Distribution of Capital—Costs—Priority.*—In an action for dissolution of partnership between two partners, who were entitled to the partnership capital and to divide profits and losses in equal shares, it was found that a larger sum was due from the firm to one partner in respect of capital than to the other. *Held*, that the assets must be applied, first, in placing the partners on an equality as regards capital, and, secondly, in payment of costs; and that if the assets should be insufficient to pay the costs, the deficiency must be made up by the partners equally.—*Ross v. White*, 71 L.T. 277.

Patent :—

- (iv.) **Ch. D.**—*Exclusive Licence—Power to Revoke—Breach of Covenants—Deviation—Rectification.*—A. granted to X. an exclusive licence to use a patent. It was expressed to be granted in consideration of £150, and certain royalties, and X.'s covenant to push the sale of the patent. X. had power to determine the licence on notice, but A. had no express power to determine it. A. was dissatisfied, and gave X. notice to determine the licence on the ground of breaches of covenant in not pushing the patent, in not paying the royalties punctually, and in deviating from the patent. He began to use the patent himself. X. sued to restrain him. He admitted that certain royalties were due. A. counterclaimed for rectification of the licence, by insertion of a power for him to determine. *Held*, that there was no case for rectification; and that A. had no power to determine the licence by reason of breaches of covenant, having a remedy in damages. *Held*, also, that X. had the power to make the deviations he had made, which were matters of detail, and in fact improvements. *Held*, that X. was entitled to the injunction, but must pay the royalties due.—*Guyot v. Thomson*, 71 L.T. 124.

Ch. D.—Threats of Legal Proceedings—Loss of Contract—Measure of Damages.—The plaintiffs were negotiating a sale of a patented article to X. X. wrote to the defendant and asked if the article was an infringement of his patent. The defendant replied that it was, and threatened legal proceedings. X. consulted his solicitor, who wrote to the plaintiffs that X. would not carry out the purchase, on account of such threats. An injunction was granted against the defendant, and an inquiry as to damages. *Held*, that the letter of X.'s solicitor was admissible as evidence to prove that the contract was lost through the defendant's threats, and that the true measure of damages was the profit which the plaintiffs would have made from the contract.—*Skinner & Co. v. Shew*, L.R. [1894] 2 Ch. 581; 71 L.T. 110.

Patent Agent:—

- (ii.) **H. L.—Registration—Fees—Board of Trade Rules—Validity—Remedy for Breach—Penalty—Interdict—Patents, &c., Act, 1888, s. 1.**—A person who practised as a patent agent before the passing of the Act is not relieved from the liability to pay the fees prescribed under the authority of the Act. The Board of Trade was acting within its powers in prescribing a registration fee and an annual subscription for patent agents, and the Court cannot consider the reasonableness thereof. Where a penalty is imposed for the violation of an Act or a statutory rule, an action for interdict or declaration of right cannot be brought, and the summary remedy for the recovery of the penalty is alone available.—*Chartered Institute of Patent Agents v. Lockwood*, L.R. [1894] A.C. 347; 63 L.J. P.C. 74; 71 L.T. 205.

Poison:—

- (iii.) **C. A.—Sale of Compound—Pharmacy Act, 1868, ss. 1, 15.**—Decision of Q. B. D. (*see* Vol. 19, p. 131, v.) affirmed.—*Pharmaceutical Society v. Armon*, L.R. [1894] 2 Q.B. 720; 42 W.R. 662.

Poor Law:—

- (iv.) **Q. B. D.—Rating—Appeal—Costs—Two Sets of Respondents.**—An unsuccessful appellant, who is ordered to pay the respondents' costs of an appeal to quarter sessions, is not, in the absence of special reasons, liable to pay two sets of costs, although he has, as required by the Union Assessment Committee Act, 1864, served notice of appeal on the churchwardens and overseers of the parish, and also on the Assessment Committee, and both these parties have appeared as respondents.—*Reg. v. Essex Justices*, 71 L.T. 296.
- (v.) **C. A.—Rating—Exclusive Occupation.**—The occupation of land which is at all times subject to the control of the owner, does not render the occupier liable to be rated.—*Rochdale Canal Co. v. Brewster*, 71 L.T. 243.
- (vi.) **C. A.—Rating—Exemption—6 & 7 Vict., c. 36.**—The Art Union of London was incorporated as a society for the advancement of the fine arts. Every subscriber was entitled to a copy of a work of art. Valuable prizes, in the shape of works of art, were also given annually by lot. *Held*, that the society was entitled to exemption from rating in respect of its premises, as a "society instituted for purposes of science, literature, or the fine arts exclusively," and supported "wholly, or in part, by annual voluntary contributions."—*Art Union of London v. Overseers of the Savoy*, L.R. [1894] 2 Q.B. 609; 71 L.T. 40; 42 W.R. 690.
- (vii.) **C. A.—Rating—Harbour Dues.**—Decision of Q. B. D. (*see* Vol. 19, p. 133, iii.) affirmed.—*Blyth Harbour Commissioners v. Churchwardens of Newsham*, L.R. [1894] 2 Q.B. 675; 71 L.T. 84.

Power:—

- (i.) **C. A.—Exercise of Joint Power—Revocation by Survivor.**—By a marriage settlement, funds were settled for the children as the husband and wife should jointly appoint, with or without powers of revocation, and subject thereto as the survivor should appoint. The husband and wife appointed by deed reserving a power of revocation and new appointment. *Held*, that such power of revocation could be exercised by the survivor.—*Rogers v. Harding*, 63 L.J. Ch. 725; 42 W.R. 677; *Harding v. Harding*, 71 L.T. 269.

Practice:—

- (ii.) **C. A.—Amendment—Writ for Service out of Jurisdiction—R.S.C., 1883, O. xi.; O. xxviii., rr. 1, 6.**—Decision of Q. B. D. (*see* Vol. 19, p. 134, iv.) affirmed.—*Holland v. Leslie*, L.R. [1894] 2 Q.B. 450; 63 L.J. Q.B. 679; 71 L.T. 33; 42 W.R. 577.
- (iii.) **Ch. D.—Contempt—Motion for Attachment—Service of Copies of Affidavits—Proof of.**—A notice of motion for attachment for disobedience to an order for payment into Court did not specify the affidavits which were to be used, and no evidence was adduced at the hearing that a copy of the affidavit of the service of the order had been served with the notice of motion. *Held*, that the notice of motion was irregular, since it did not appear that copies of the affidavits had been served therewith.—*Sturgeon v. Lawrence*, 71 L.T. 57.
- (iv.) **Q. B. D.—Costs—Habeas Corpus—Judicature Act, 1890, ss. 4, 5.**—All costs are in the discretion of the Court, except those exempted by sect. 4 of the Act. The costs of an application for a writ of *habeas corpus* were awarded.—*Reg. v. Mansel-Jones*, 70 L.T. 945.
- (v.) **Q. B. D.—County Court—Action Remitted—Counter-claim—Unliquidated Damages—County Courts Act, 1885, s. 65.**—The master made an order remitting an action to the county court. After the order a counter-claim was put in for unliquidated damages to an amount within the county court jurisdiction. The judge affirmed the master's order, no objection as regards the counter-claim being raised. *Held*, that it was now too late to take the objection, but that even if the counter-claim had been before the master, he would have had jurisdiction to make the order.—*Guilford v. Lambeth*, 71 L.T. 256.
- (vi.) **P. D.—Divorce—Petitioner engaged abroad—Leave to Solicitor to Sign Petition.**—A proposed petitioner was engaged as an engineer in South Africa, and the acts of adultery to be alleged in the proposed petition had been committed since he left England, and it appeared that he could not come to England without risking the loss of his situation. Leave was given to his solicitor to sign the petition and swear the verifying affidavit on his behalf; and also that the marriage and cohabitation might be proved by affidavit.—*In re Hobson*, 70 L.T. 816.
- (vii.) **P. D.—Divorce—Damages—Intervention—Assignee of Petitioner's Interest.**—The petitioner in a divorce suit having recovered damages against the co-respondent, a person claiming to be the assignee of the petitioner's interest in the damages applied for leave to intervene. *Held*, that the leave must be refused.—*Hunt v. Hunt*, L.R. [1894] P. 247.
- (viii.) **P. D.—Divorce—Restitution of Conjugal Rights—Answer—Pleading.**—In answer to a wife's petition for restitution of conjugal rights, the husband pleaded that it was not presented in good faith, for the petitioner had alleged in a former suit for judicial separation, in which she had failed, and still alleged, that he had been guilty of an abominable crime. He also pleaded that this amounted to cruelty, and prayed for a judicial separation. Upon a summons to strike out

the answer, as containing no allegation of a matrimonial offence, and disclosing no bar to the prayer of the petition. *Held*, that there was a reasonable doubt as to the legal effect of the allegation contained in the answer, and that the legal effect could be properly discussed after the facts had been elicited at the trial, and that the answer ought not to be struck out.—*Russell v. Russell*, 71 L.T. 268.

- (i.) **C. A.**—*Evidence—Taken in another Cause—R.S.C.*, 1888, O. xxxvii., r. 3.—The rule does not authorise evidence to be read which was not previously admissible, but only removes the necessity for obtaining an order to read the evidence to which it applies.—*Printing, Telegraph, and Construction Co. v. Drucker*, 71 L.T. 172; 42 W.R. 674.
- (ii.) **Ch. D.**—*Evidence—Documents Produced—Evidence en bloc—Report of Referee—Motion to Vary*.—Where documents are produced by a witness who is not a party, the proper course is for an adjournment to be made to enable the parties to ascertain which of them are material. The parties are not entitled to put in the whole of the documents *en bloc*, or to ask the witness to produce them *seriatim*, and question him thereon. The report of a referee will not be varied or sent back on the ground of improper rejection of evidence, unless it can be shewn that substantial wrong has been done thereby.—*In re Maplin Sands*, 71 L.T. 56.
- (iii.) **Q. B. D.**—*Equitable Execution—Receiver—Sale of Goods*.—There is no jurisdiction to order the sale of the goods and chattels of a judgment debtor in favour of a judgment creditor who has been appointed receiver of such property.—*De Peyrecave v. Nicholson*, 71 L.T. 255; 42 W.R. 702.
- (iv.) **C. A.**—*Execution—Receiver—Rents and Profits of Land—Business*.—A receiver appointed by way of equitable execution is not entitled to carry on the business of the judgment debtor, or to take the profits derived from it, though he may prevent the debtor from carrying on such business. A judgment creditor of the defendants, who carried on a theatre of which they had a lease, which was mortgaged, was held entitled to have a receiver of the rents and profits of the defendants' land, without prejudice to prior incumbrances, and delivery of possession of the property to the receiver; but the receiver was not to be allowed to take the receipts at the door of the theatre, such receipts not differing from the earnings of any other business.—*Cadogan v. Lyric Theatre*, 71 L.T. 8.
- (v.) **Ch. D.**—*Foreclosure—Receiver—Rents prior to Foreclosure—Credit given by Mortgagee for Sum Certain*.—Where the plaintiff in a foreclosure action, in order to avoid opening the foreclosure by claiming payment of rents come to the hands of the receiver between the date of the certificate and the day fixed for redemption, submits to be charged in account with a sum certain in the hands of the receiver in respect of such rents, the judgment should reserve liberty for either party to apply for payment of any money come to the hands of the receiver.—*Lusk v. Sebright*, 71 L.T. 59.
- (vi.) **H. L.**—*Parties—Joinder of Plaintiffs—Separate Causes of Action—R.S.C.*, 1883, O. xv., r. 1; O. xviii., rr. 1, 8.—Decision of C. A. (see Vol. 19, p. 53, vi.) reversed.—*Smurthwaite v. Hannay*, 71 L.T. 157.
- (vii.) **C. A.**—*Parties—Joint Contractors—Stay till Joinder—Discretion—R.S.C.*, 1883, O. xvi., r. 11; O. xxi., r. 20.—One of two joint contractors, who is sued alone, has no absolute right to have the other joint contractor joined as a defendant; and though, as a general rule, when they are both within the jurisdiction, an order ought to be made to stay proceedings until they shall both be joined, yet the Court will

properly refuse, in the exercise of its discretion, to make such an order when one of them cannot be found by the plaintiff.—*Robinson v. Geisel*, L.R. [1894] 2 Q.B. 585; 71 L.T. 70; 42 W.R. 609.

- (i.) **C. A.**—*Payment into Court—Admissions.*—An executor who under the directions of the will carried on his testator's business, admitted that he had allowed part of the estate, directed by the will to be invested, to be employed in the business, but alleged that the estate did not cover the testator's liabilities. *Held*, that he ought not to be ordered to pay such money into Court.—*Neville v. Matthewman*, 71 L.T. 282; 42 W.R. 675.
- (ii.) **C. A.**—*Relief Sought by Defendant not Arising out of Plaintiff's Cause of Action.*—Where a defendant seeks relief against a plaintiff in respect of a matter which is not in any way arising out of or incidental to the plaintiff's cause of action, he is not entitled to apply by way of motion in the plaintiff's action, but must deliver a counter-claim or issue a writ in a cross action.—*Carter v. Fey*, L.R. [1894] 2 Ch. 541; 63 L.J. Ch. 723; 70 L.T. 786.
- (iii.) **Ch. D.**—*Service out of Jurisdiction—Concurrent Writ—Original Writ—Incorrect Copy.*—A person entitled to a share of property in Canada, which was vested in a Canadian trustee, mortgaged his interest, and became bankrupt. The trustee brought a redemption action against the mortgagees and the Canadian trustee, claiming that the latter should be directed to pay the amount found due to the mortgagees. He obtained leave to issue a concurrent writ for service on the Canadian defendant, the application being made before the original writ on the other defendants had been served, and the affidavit in support did not state that the Canadian defendant was a necessary and proper party, or that the plaintiff had a good cause of action against him. The copy of the concurrent writ served on him was not marked "concurrent." *Held*, that the application for leave to serve out of the jurisdiction should not have been made before service of the original writ, and that it was not supported by proper evidence; also, that the copy served on the Canadian defendant was not a true copy. *Held*, that the latter was not a necessary or proper party, as the action claimed separate relief against the different defendants. *Held*, therefore, that the order giving leave to serve the concurrent writ must be discharged, and the service on the Canadian defendant set aside.—*Collins v. North British and Mercantile Investment Co.*, 63 L.J. Ch. 709; 71 L.T. 58.
- (iv.) **C. A.**—*Time for Appeal.*—The rule of November, 1893, limiting the time for appealing against judgments to three months, does not apply to a judgment perfected before that rule came into operation.—*Budgett v. Budgett*, L.R. [1894] 2 Ch. 555.

Public Health:—

- (v.) **C. C. R.**—*Unsound Fruit—Exposure for Sale—Notice—Broker—Public Health (London) Act, 1891, s. 47, sub-s. 3.*—The defendant, a broker, sold to a retail dealer some bags of foreign nuts, knowing that a part of the contents of each were unsound. A notice was exhibited at his pay-desk that packages of fruit, the contents of which might prove partly unsound, were sold on the express condition that the buyer should destroy the unsound portion. The purchaser discovered that most of the nuts were bad, and handed them to an inspector, who had them condemned and destroyed. The defendant was indicted and convicted. *Held*, that the conviction must be quashed. There had been no sale or exposure for sale by the purchaser, and the nuts had

never been liable to seizure, nor was it shewn that they had been purchased for the food of man.—*Reg. v. Dennis*, L.R. [1894] 2 Q.B. 458; 63 L.J. M.C. 153; 42 W.R. 586.

Railway :—

- (i.) **P. C.**—*Exclusive Right to Work—Construction of Agreement.*—A city corporation, in pursuance of statute, granted to the appellants by deed the right to construct and work a railway in the streets. It was provided that if any other party proposed to construct a railway in any street not occupied by the appellants, the nature of the proposal should be communicated to the latter, and that they should have the option of carrying it out. *Held*, not to confer an exclusive right to use the streets, but that the corporation could grant the respondents a right to construct railways in any streets worked by the appellants, and in any streets not worked by them, but which they were willing to work.—*Winnipeg Street Railway Co. v. Winnipeg Electric Street Railway Co.*, 71 L.T. 127.
- (ii.) **H. L.**—*Negligence—Breach of Duty to Passenger.*—Decision of C.A. (see Vol. 18, p. 96, ii.) affirmed.—*Cobb v. G.W.R.*, L.R. [1894] A.C. 419; 63 L.J. Q.B. 629; 71 L.T. 161.
- (iii.) **Q. B. D.**—*Support—Compensation for Minerals—Railways Clauses Act, 1845, ss. 6, 78, 81—Mandamus.*—The owners of minerals under a railway gave notice of their intention to work them, and the railway company required a certain amount of support to be left. Arbitrators were appointed to settle the amount of compensation for the minerals to be left unworked. *Held*, that the claim of the mineral owners was made under sect. 78 of the Act above-mentioned, and that the provisions of the Lands Clauses Act as to the assessment of compensation applied. The Court will not refuse to grant a prerogative writ of mandamus in every case in which an action of mandamus would lie.—*Reg. v. L. & N.W.R.*, L.R. [1894] 2 Q.B. 512; 63 L.J. Q.B. 695.

Receiver :—

- (iv.) **Q. B. D.**—*Order to Pay to Creditors—Payment to Solicitor—Defalcation—Liability.*—A receiver of the defendant's property was appointed by way of execution. He was directed to receive an annuity to which she was entitled, to pay her a weekly sum, and then to pay the plaintiffs the amount of their judgment debt. He handed over the balance of the amount received to the solicitor who had acted for the plaintiffs, and who was his own private solicitor. The solicitor misappropriated the money. *Held*, that the receiver had not obeyed the order to pay the money to the plaintiffs, and was liable for the sum misappropriated.—*Ind, Coope & Co. v. Kidd*, 71 L.T. 203.

Revenue :—

- (v.) **H. L.**—*Legacy Duty—Personalty to be Invested—Entail—Disentail.*—Testator directed his personal estate to be laid out in land, and the land to be entailed on W. W. presented a petition for disentail, and having obtained the consent of the three next heirs, he obtained an order that the trustees should convey in fee simple the lands and moneys held by them. The trustees had only laid out a small sum in land, and had expended a sum of £12,000 in building a mansion-house. *Held*, that legacy duty was payable on the whole of the personal estate. Also that the compensation paid to the next heirs of entail was not to be deducted before payment of duty, nor the sum expended in building a mansion-house, that not being a specific purchase of land.—*Macfarlane v. Lord Advocate*, L.R. [1894] A.C. 291.

Scotch Law:—

- (i.) **H. L.—Succession—Vesting—Substitution.**—Testator gave the life-rent of his entire estate to his wife. He proceeded, "I leave to my nephew" W. the estate of B., "but I wish it expressly understood that in the event of my said nephew dying without leaving any lawful male heir of his body, then, and in that event, my said lands are to revert back to my nephew" H. W. survived the testator, but died a bachelor in the lifetime of the widow. *Held*, that the estate of B. vested absolutely in him subject to the widow's life estate, and that H. was not entitled.—*Hamilton v. Ritchie*, L.R. [1894] A.C. 310.

Settled Estate:—

- (ii.) **Ch. D.—Authority to Sell—Female Trustee—Settled Estates Act.**—The Court may confer authority to sell under the Act upon female trustees, but will only do so in very exceptional cases.—*In re Pecke's Settled Estates*, 42 W.R. 687.
- (iii.) **Ch. D.—Building Purposes—Laying out for—Petition—Parties—Scheme.**—Trustees of a will, who had applied unsuccessfully by originating summons, presented a petition for leave to make certain improvements not exactly covered by the will, and without presenting any definite scheme. *Held*, that the order would be made on a petition by the trustees, and that on the evidence produced the Court might dispense with a definite scheme.—*In re Christy's Settled Estate*, 42 W.R. 613.

Sheriff:—

- (iv.) **Q. B. D.—Duty of—Execution.**—A sheriff, in executing a writ of *fi. fa.*, should have regard, so far as is reasonable, to the interests and instructions of the execution creditor. There is no duty imposed upon a sheriff to hold the goods seized under a *fi. fa.* for a period of five days, as is the case with a county court bailiff.—*E. p. Sheriff of Southampton*; *in re Crook*, 71 L.T. 236.
- (v.) **Q. B. D.—Interpleader—Costs.**—A sheriff cannot be ordered to pay costs in interpleader proceedings. He is no party to the issue, nor in any sense a co-defendant. If ordered to pay costs he should not appeal, but should obtain a prohibition.—*Temple v. Temple*, 63 L.J. Q.B. 556

Ship:—

- (vi.) **P. D.—Charter-Party—Arrived Ship—"Ready to Load"—Delay through Sanitary Regulations.**—A charter-party provided that the charterers should have the option of cancelling the charter if the ship should fail to arrive at the port of loading and be ready to load at a named hour; and also that detention by quarantine should not count as lay days. The ship arrived before the fixed time, but was not allowed to communicate with the shore until the doctor had pronounced her free from infection. This was not done until after the fixed time, and the charterers claimed that she was too late, and cancelled the charter. *Held*, that the ship was not unready to load, that the charterers were liable in damages for cancelling the charter, and that the damages must include damages for loss of the charter.—*The Austin Friars*, 71 L.T. 27.
- (vii.) **P. D.—Charter-Party—Running Days—How Computed.**—The term "running days" in a charter-party must, in the absence of any indication to the contrary, be taken to mean calendar days and not periods of twenty-four hours.—*The Katy*, 71 L.T. 60.
- (viii.) **C. A.—Collision—Flare-up Light—Regulations, Art. 11.**—A fishing-smack, on her way to the fishing ground, on a clear night, sighted a

vessel overtaking her. She exhibited one flare-up light, but the vessel kept on, and there was a collision. *Held*, that the smack was to blame for not showing flare-up lights at proper intervals as long as there was any danger.—*The Bassett Hound*, 71 L.T. 12.

- (i.) **P. C.**—*Collision—Danube—Regulations—Art. 32.*—An ascending ship must stop below a contracted part of the river until a descending ship has cleared it, whenever the ascending ship has notice that if she proceeds there will be a risk of her meeting the other at or near to the contracted part; and a descending ship must stop above such point when the other has actually reached such point and has begun to navigate the passage before she has notice that if she proceeds there will be a risk of meeting. If the ascending ship neglects to stop, the descending ship must refrain from exercising her rights of precedence. *Semble*, the channel at the lower part of the Sulina Cut is not within the article.—*Sbutega v. Attwool*, 71 L.T. 101.
- (ii.) **P. D.**—*Collision—Damages—Tenders—R.S.C., 1883, O. xxii., rr. 1, 5; O. lxxii., r. 3.*—A tender, according to the old Admiralty practice, is nothing more than an offer, and it was not intended to alter this practice, or to assimilate it to the technical rules regulating tender at common law. In the absence of any express rule regulating the practice of tender in Court in an Admiralty action, it may be concluded that the old procedure and practice of tender in such actions should remain in force, except so far as the rules affect the manner in which the money is to be lodged in Court.—*The Mona*, 71 L.T. 24.
- (iii.) **P. D.**—*Personal Injury—Admiralty Court Jurisdiction Act, 1861, s. 7—“Damage.”*—A seaman, while crossing the deck of a ship, which was moored between his own vessel and the quay, fell down a hatchway, which was covered with tarpauling, and was injured. *Held*, that the ship could not be said to be the active instrument of the damage done, and that it was done on board the ship, and not by the ship, within the meaning of the section above-mentioned. *Semble*, that the word “damage” is as applicable to damage done to the person as to damage done to property.—*The Theta*, 71 L.T. 25.
- (iv.) **P. D.**—*Insurance—Hire of Tug—Contract of Indemnity—Duty to Enforce Policy.*—In an agreement for the hiring of a tug, the owner agreed to fully insure the tug against certain risks, including the risk of collision, and that if any of the risks should occur, he should indemnify the hirers to the extent of all moneys received under the insurance. He effected policies to a portion only of the agreed value of the tug. A barge belonging to the hirers collided while in tow of the tug with a vessel, and the owners of the vessel sued the hirers, who admitted liability, and the damages were assessed. The underwriters refused to pay the tug owner the amount of the damages. *Held*, that the latter was only bound to indemnify the hirers to the amount of money received under the policies, and not to sue the underwriters, and that as he had received nothing he was under no liability.—*Williams, Torrey, and Field v. Knight*, 71 L.T. 92.
- (v.) **C. A.**—*Insurance—Collision—Proximate Cause of Loss.*—A ship was insured against damage through collision with any object, but not against perils of the sea. She ran against a quay in a river, and a leak was thereby caused. The leak was temporarily repaired, and a tug was sent to tow her to dock. The effect of the motion was that the leak re-opened, and the ship had to be abandoned. *Held*, that the collision was the proximate cause of the loss, and that it was covered by the policy.—*Reischer v. Borwick*, L.R. [1894] 2 Q.B. 548; 71 L.T. 238.

- (i.) **Q. B. D.—Insurance—Policy partly Written and partly Printed—Attachment.**—A policy on freight of meat “at and from Monte Video to any ports in the Rivers Plate (including the Boca), Parana or Uruguay, and thence to the United Kingdom,” provided that the underwriters should be liable for any loss from breaking down of machinery until final sailing, and that “the assurance shall commence upon the freight and goods from the loading of the said goods on board at Monte Video.” The name “Monte Video” in the last clause was written, the rest of the clause being printed. It was understood by the parties that meat could not be shipped at Monte Video. The ship went from Monte Video to Boca, but the refrigerating machinery broke down, so that no meat could be carried. *Held*, that the words “Monte Video” in the last-mentioned clause were a compendious mode of enumerating the loading ports, that the clause was not to be rejected as insensible, and that as no meat was ever loaded, the policy did not attach.—*Hydarnes S.S. Co. v. Indemnity Mutual Marine Assurance Co.*, L.R. [1894] 2 Q.B. 590; 71 L.T. 193.
- (ii.) **Q. B. D.—Overloading—Responsibility of Owner—Merchant Shipping Act, 1876, s. 28.**—A British ship was, to the knowledge of the master, loaded in a foreign port so as to submerge the mark placed on her in accordance with the Act. The owner, who resided in England, appointed the master, but did not know of the overloading. *Held*, that there was no evidence that he had “allowed” the overloading, and that he could not be convicted of an offence against the Act.—*Massey v. Morris*, L.R. [1894] 2 Q.B. 412; 63 L.J. M.C. 185; 70 L.T. 872; 42 W.R. 638.
- (iii.) **P. D.—Salvage—Agreement—Deductions—Interlineations—Merchant Shipping Acts, 1854, s. 182; 1862, s. 18; 1883, s. 22.**—An agreement by which a seaman stipulates that his share of salvage remuneration shall be calculated, not upon the amount awarded, but upon so much of that amount as remains after making certain deductions, is void under the first-mentioned section. *Semble*, that clauses respecting deductions which have been inserted in such an agreement without the consent of all the parties interested, are interlineations and alterations within the meaning of the last-mentioned section, and therefore void.—*The Saltburn*, 71 L.T. 19.
- (iv.) **P. D.—Salvage—Appraisement—Mistake—Varying Decree.**—Where the defendants in a salvage action have allowed the Court to award salvage upon the appraisement, they cannot call upon the Court to vary the decree merely because, after the decree, it has been found, for some reason unexplained, that the property has been sold for much less than the appraised value. *Semble*, that the Court cannot entertain any suggestion that the award should be reduced in proportion to the difference between the appraised value and the amount realised upon the sale, because the amount of the award does not bear any fixed proportion to the value of the property valued.—*The Georg*, 71 L.T. 22.
- (v.) **P. P.—Towage—Collision—Liabilities.**—A tug, while towing, collided with, and sank, a third vessel, and was herself damaged. The third vessel and the tug were found to blame for excessive speed in fog. The tow was found to blame for not controlling the speed of the tug. *Held*, that the owners of the tug and the owners of the tow were liable for half the damages of the third vessel after deducting half the damages of the tug for which the owners of the third vessel were liable.—*The Englishman and The Australia*, L.R. [1894] P. 239; 70 L.T. 847.

Solicitor :—

- (i.) **Q. B. D.—Company—Costs of Obtaining Act—General and Separate Capital—Limitations—Novation.**—The promoters of an Act by which a company was to be created and empowered to raise capital, and if they so resolved to raise a separate capital for certain works, agreed with a solicitor that if the application failed or the capital was not raised he should only receive out-of-pocket expenses. The Act passed, but only the separate capital was raised. *Held*, that the solicitor was entitled to his profit charges as a substantial issue of capital had been made. *Held*, also, as to the Statute of Limitations, that from a letter refusing payment till taxation, a promise to pay on taxation might be inferred. *Held*, also, that the company having adopted the contract of the promoters, there was a novation in consideration of the discharge of the promoters.—*Nichols v. Regent's Canal Co.*, 63 L.J. Q.B. 641; 71 L.T. 249.
- (ii.) **Ch. D.—Costs—Scale—Adwoson.**—An adwoson in gross is freehold property within the meaning of the General Order, and a solicitor is therefore entitled to the scale fee in respect of a purchase thereof.—*In re Earnshaw-Wall*, 71 L.T. 173; 42 W.R. 567.
- (iii.) **Ch. D.—Costs—Scale Fee.**—Where a solicitor acts for a purchaser who before completion sells a portion of the property to a sub-purchaser, he is entitled to charge the scale-fee on the whole purchase money for acting as purchaser's solicitor, and also the scale-fee on the sub-purchase money for acting as vendor's solicitor. A solicitor is not entitled to charge his client for a plan, the preparation of which does not involve the skilled labour of a surveyor, such a charge being covered by the scale fee.—*In re Read*, 42 W.R. 601.
- (iv.) **C. A.—Costs—Conveyancing—Scale Fee—Auction.**—If on a sale by auction the vendor's solicitor charges his client with a fee paid to the auctioneer, he is not entitled to the scale charge for conducting the sale, although he has done all the work in connection with the sale, except receiving the bids.—*Drielsma v. Manifold*, 63 L.J. Ch. 653; 71 L.T. 62; 42 W.R. 578.
- (v.) **Ch. D.—Liability of—Mortgage—Insufficient Security.**—A firm of solicitors acted for both parties in a mortgage transaction, but the mortgagees acted on their own responsibility, with full knowledge of the value of the security. The firm received the mortgage money and paid it into their own banking account. Two days later they presented their own cheque to a bank where the title-deeds were deposited as security, and received the deeds. The security proved insufficient. *Held*, that the solicitors were not responsible for having advised the mortgage; and that the fact that the money had been paid through them made no difference.—*Brinsden v. Williams and Bartlett*, 63 L.J. Ch. 713; 71 L.T. 177; 42 W.R. 700.
- (vi.) **C. A.—Order for Payment of Costs—Sequestration—R.S.C.**, 1883, O. xliii., rr. 6, 7.—On non-compliance with an order for the payment of costs, an order giving leave to issue a writ of sequestration forthwith may be made, without the necessity of first obtaining a four-day order.—*Hood-Barrs v. Cathcart*, 70 L.T. 780.

Statute :—

- (vii.) **Ch. D.—Completed Transaction Thereunder—Repeal—Effect of.**—A Turnpike Act, which was to continue in force for twenty-one years, vested a certain public bridleway in the owner of the land which it crossed, in exchange for land of his taken for the purposes of the Act, and enacted that it should be unlawful for the public to use it. The Act was continued by subsequent statutes till it was repealed in

1856. *Held*, that the repeal did not revive the public right to use the bridleway.—*Gwynne v. Drewitt*, L.R. [1894] 2 Ch. 616; 71 L.T. 190.

Sunday Observance :—

- (i.) **Q. B. D.**—*Lectures—Entertainment—Chairman and Keeper—Liabilities of—Lord's Day Observance Act, 1781, ss. 1, 2.*—In an action for penalties in respect of Sunday-evening lectures on entertaining subjects to which the public was admitted on payment, but which were not given for the purposes of profit, the jury found that the hall which was hired, was, on the occasions in question, "a place open and used for public entertainment or amusement." *Held*, that a person who had taken the chair, introduced the lecturer, and then taken his place amongst the audience, was not liable to penalties as "chairman," "master of the ceremonies," or "manager or conductor"; and that a person to whom the licence for the use of the hall had been granted, and who had sanctioned the letting of the hall, was not liable as "keeper" of such place.—*Reid v. Wilson*, 71 L.T. 299.

Surety :—

- (ii.) **Ch. D.**—*Payment by Surety—Right to prove against Estate of Co-Surety—Mercantile Law Amendment Act, 1856, s. 5.*—A surety who has paid the debt may prove against the estate of a co-surety for the whole amount paid, though he can actually recover only the proportion due as between co-sureties.—*Morgan v. Hill*, 42 W.R. 618.

Trade Mark :—

- (iii.) **Ch. D.**—*Amendment of—Change in Name of Firm.*—Leave given to amend trade marks registered before August 13th, 1875, by striking out certain names and addresses, and inserting the present firm, name, and address of the owner.—*In re Brown's Trade Marks*, 71 L.T. 156.
- (iv.) **Ch. D.**—*Registration—"Invented Word"—"Geographical Name"—Patents, &c., Act, 1888, s. 10 (1).*—Eboli being the name of a town in Italy, *held*, that "Eboline" is not capable of registration as a trade mark.—*In re Sir Titus Salt, Bart., Sons, & Co.'s Application*, 42 W.R. 666.

Trustee :—

- (v.) **Ch. D.**—*"Owner"—Public Health Act, 1848, ss. 2, 49, 90—Drainage Charges—Incidence of.*—Trustees of real property, in whom the legal estate is vested, are "owners" of the property within the definition in the Act above-mentioned, and the expenses of drainage works executed in respect of the property are recoverable from them. They may apply capital moneys, part of the trust estate, in payment of such expenses, and as between tenant for life and remainderman, the money so spent must be treated as a charge upon the property.—*Harrison v. Barney*, 63 L.J. Ch. 676; 71 L.T. 180.

Vendor and Purchaser :—

- (vi.) **C. A.**—*Rent-charge—Limited Owner—Easement—Lands Clauses Act, 1845, ss. 10, 11—Liverpool Waterworks Act, 1855, ss. 2, 3.*—The latter Act extended the former by giving power to purchase lands and easements "at an annual or other rent." Under the Acts a limited owner conveyed land and an absolute owner granted easements to the corporation, in both cases reserving a perpetual yearly rent. *Held*, that under the Acts a limited owner had power to sell for a rent-charge, and that an easement might be purchased for a rent-charge, so that the rents reserved were charged upon the rates. Although at common law a rent cannot issue out of an easement, it may do so by

statute. When land is sold reserving a rent, the rent, even if at law a rent-sock, may be properly called a rent-charge, for there is since the statute 4 Geo. II., c. 28, s. 5, a right to distrain incident thereto.—*In re Lord Gerard and Beecham's Contract*, 63 L.J. Ch. 695; 71 L.T. 273; 42 W.R. 678.

- (i.) **C. A.**—*Specific performance—Contract by Letter—Negotiation.*—Decision of Ch. D. (see Vol. 19, p. 108, v.) affirmed.—*Page v. Norfolk*, 70 L.T. 781.
- (ii.) **Ch. D.**—*Title—Voluntary Deed.*—The mere existence of a voluntary deed in a vendor's title, is not, of itself, sufficient to justify a purchaser in repudiating the contract as soon as he discovers the fact.—*Noyes v. Paterson*, 71 L.T. 228.

Water Company:—

- (iii.) **Ch. D.**—*Domestic Purposes—Fixed Bath.*—The Act of the defendant company empowered them to make a special agreement as to charge in the case of water supplied for "other than domestic purposes;" and provided that a supply for "domestic purposes" should not include a supply for "baths, horses, cattle, or for washing carriages, or for any trade or business." *Held*, that the supply of water for a fixed bath in a dwelling-house was a supply for "other than domestic purposes," and that the plaintiff was not entitled to have a supply for such a bath upon payment of the ordinary water rate.—*Walker v. Lambeth Waterworks Co.*, 71 L.T. 75.
- (iv.) **C. A.**—*Fire Plugs—Fixing and Maintaining—Liability of Local Board.*—The Waterworks Clauses Act, 1847, and the Public Health Act, 1875, impose no obligation on an urban local authority to bear the expense of maintaining in repair the fire plugs in their district, unless the same have been fixed by them, or by some water company or person at their request.—*Grand Junction Waterworks Co. v. Brentford Local Board*, L.R. [1894] 2 Q.B. 735; 71 L.T. 240.
- (v.) **Q. B. D.**—*Rates—Summary Recovery—Limit of Time—Waterworks Clauses Act, 1847, ss. 74, 85—Railways Clauses Act, 1845, s. 140—Summary Jurisdiction Act, 1879, ss. 6, 85—Jervis's Act, 1848, ss. 1, 11.*—Where a water company seeks to recover arrears of water rates before a metropolitan magistrate, and the rates have been due more than six months before the issue of the summons, the magistrate has no jurisdiction to entertain the matter.—*East London Waterworks Co. v. Charles*, L.R. [1894] 2 Q.B. 780; 42 W.R. 702; 63 L.J. M.C. 209; 71 L.T. 200.
- (vi.) **Ch. D.**—*Parliamentary Powers—Interference with Water Supply.*—The plaintiffs supplied their town with water which flowed in a defined course into their reservoir from certain springs. Their special Act provided that it should not be lawful for any person to do anything whereby the water of the said springs should be diminished. There was no compensation clause in favour of persons injuriously affected. The defendant had land higher than the springs, and was about to cut a tunnel for the alleged purpose of draining beds of stone under his land, the effect of which would be to intercept water percolating in an undefined course to the springs, and so to diminish the supply therefrom. The Court considered that the defendant was working, not for the purpose of raising the stone, but in order to force the plaintiffs to pay him compensation. *Held*, that the *mala fides* of the defendant was not a sufficient ground for granting an injunction

to restrain him from exercising his common law right. On the construction of the Act the Court granted an injunction against materially diminishing the flow of water to the plaintiffs' reservoir.—*Mayor, &c., of Bradford v. Pickles*, L.R. [1894] 3 Ch. 53; 63 L.J. Ch. 587; 42 W.R. 697.

Will :—

- (i.) **Ch. D.—Ademption—Order in Lunacy.**—The transfer, under an Order in Lunacy, of consols into the name of the Paymaster-General out of the name of a testatrix who had become of unsound mind; *held*, not to adeem a legacy of all the consols "standing in my name and belonging to me at the time of my decease." The investment under the same order of money of the testatrix in consols, *held*, not to increase the legacy. Part of the consols were sold to pay costs. It was ordered that the sale should be taken in reduction, not of the amount transferred, but of the amount invested.—*Anderson v. London City Mission*, L.R. [1894] 2 Ch. 577.
- (ii.) **Ch. D.—Charity—Lapse—Cy-pres.**—A legacy to a charity which ceases to exist between the date of the testator's will and the time of his death lapses, and will not, in the absence of a general charitable intention on the terms of the gift, be administered cy-pres. —*Rymer v Stanfield*, 63 L.J. Ch. 623; 71 L.T. 174; 42 W.R. 581.
- (iii.) **Ch. D.—Charity—Volunteer Corps—Mortmain Act, 1888, s. 13—Perpetuities.**—A testator gave an annuity to a certain volunteer corps "on the appointment of the next lieutenant-colonel." The officer who held that post at the date of the will, still held it at the testator's death. *Held*, that the gift was one to a charity within the Act; and that, as it was contingent on an event which might never happen, it was void under the rule against perpetuities.—*Alt v. Lord Stratheden and Campbell*, 71 L.T. 225; 42 W.R. 647.
- (iv.) **Ch. D.—Construction—Devise for Life—Devisee appointed Residuary Legatee.**—Testator directed payment of debts, &c., and gave his residence, describing it, "as well as all my lands, tenements, and hereditaments to my dear wife, for and during the term of her natural life, wheresoever and whatsoever real and personal;" then after giving legacies he proceeded, "and to this my last will and testament I appoint and direct and make my dear wife sole executrix to this my will, and also at the same time I appoint and make her my residuary legatee." *Held*, that the widow took an estate for life in the real estate, which, subject thereto, passed to the heir-at-law.—*Morris v. Atherden*, 71 L.T. 179.
- (v.) **C. A.—Construction—Gift to Class—Time to Ascertain Class.**—Testator gave his residue to his wife for life, and after her death to "the nearest relatives then living (to be hereafter named in a codicil)." He never made any codicil. *Held*, that the class must be ascertained at the death of the testator, namely, his next-of-kin by blood at that date, but that no member of the class could take who did not survive the wife.—*Prall v. Bevan*, 71 L.T. 5.
- (vi.) **Ch. D.—Construction—Gift for Investment for Benefit of Son—Absolute Gift—Discretion.**—Testator declared "I desire that £1,200 shall be invested for the benefit and advancement of my eldest son on his attaining the age of twenty-one years, or as soon after as practicable, such sum to be applied to his professional or other advancement at the discretion of my executor." He directed that the sum should be "very judiciously invested," being "intended specially for the advancement and promotion in life" of the son. *Held*, that the executor had no discretion, and that the son was absolutely entitled on attaining twenty-one.—*Mills v. Johnston*, 42 W.R. 616.

- (i.) **C. A.—Construction—Shifting Clause—Possession—Infant—Management.**—A will which settled real estates, provided that the trustees might enter into possession and manage the estates during the infancy of any person entitled. It also contained a proviso that if any person for the time being entitled to the possession should succeed to the title of Earl of R., the estates should shift. *Held*, that "possession" meant actual possession, and that an infant who but for the management clause would have been entitled to the possession, did not forfeit the estates on succeeding to the earldom.—*Leslie v. Earl of Rothes*, L.R. [1894] 2 Ch. 499; 63 L.J. Ch. 617; 71 L.T. 134.
- (ii.) **Ch. D.—Construction—Specific Devise—Uncertainty.**—A testator, who had four sons, devised to the eldest "all that newly built house, being No. —, Sudeley Place." He then devised three other houses in similar terms to the other sons. In each case the number of the house was left in blank. He had erected the houses recently; they were not numbered at the date of the will, but were numbered shortly before his death. *Held*, that as the testator had intended to select the house for each son, and the descriptions were indistinguishable, the devise was void for uncertainty.—*Asten v. Asten*, 71 L.T. 229.
- (iii.) **Q. B. D.—Description—Evidence of Intention.**—The testator devised to the plaintiff "the malting-office with the two adjoining cottages, and the garden and out-offices thereto belonging." He devised his residuary real estate to the defendant. *Held*, that the garden of the malthouse passed under the devise to the plaintiff, and that evidence of the testator's intention was not admissible, there being no latent ambiguity.—*Downe v. Sheffield*, 71 L.T. 292.
- (iv.) **Ch. D.—Legacy—Contingent—Severance—Intermediate Income.**—If a contingent legacy is severed from the rest of the estate for the purposes of the administration, the intermediate income will not pass to the legatee on the happening of the contingency; but if the severance is for the purposes of the legacy, the gift of the fund carries the intermediate income.—*Snaith v. Snaith*, 42 W.R. 568.
- (v.) **P. D.—Probate—Codicils—Additional or Substitutional—Extrinsic Evidence.**—A testator executed a will in 1885, and two codicils in 1890, and 1892. The last codicil contained no clause of revocation. The three documents were found at his bankers, in separate envelopes. There was also found at his house an altered copy of the codicil of 1890, which had served as a draft for that of 1892. There was an indorsement written by the testator which shewed that he meant the second codicil to be in substitution for the first. Between the dates of the two codicils his property had increased. The benefits conferred by the second were larger in amounts than those mentioned in the first, but the same class of persons were benefited in both documents, which were similar in terms, and contained the same powers, provisions, and limitations. *Held*, that evidence of the surrounding circumstances was admissible, and that the later codicil must be taken to be in substitution for the former.—*Wainwright v. Wainwright*, 71 L.T. 265.
- (vi.) **P. D.—Probate—Foreign Will—Persons Appointed to Realize English Property.**—A person domiciled in Germany made a will appointing persons to realize his property in England, and pay the proceeds to the German executors. The Court made to these persons a grant for the use and benefit of the German executors.—*In the goods of Briesemann*, L.R. [1894] P. 260; 71 L.T. 263.
- (vii.) **P. D.—Probate—Married Woman—Wife of Naturalized Frenchman—Status of.**—By French law the act of naturalization is purely personal, and affects the status only of the person naturalized. The testatrix

had married a British subject, a native of Mauritius, and by a settlement, which declared the English domicile, had power to appoint the settled fund. Her husband became a naturalized Frenchman, and she afterwards, while in England, made her will under the power in English form. She died domiciled in France. The Court, upon evidence that the will, though not made according to French law, would be operative in France, granted probate thereof.—*In the goods of Brown-Séguard*, 70 L.T. 811.

- (i.) **P. D.—Probate—Appointment of Executor.**—B., the testatrix, appointed C. her executor, but in case C. should predecease her, or should die without having fully administered, she appointed A. executor. C. survived B., and died without having fully administered. A. survived B., but died before C. *Held*, that the executors of C. were entitled to administration, with the will annexed, of the portion of B.'s estate not administered.—*In the goods of Bond*, 70 L.T. 813.
- (ii.) **P. D.—Probate—Action—Administrator Pendente Lite.**—The functions of an administrator *pendente lite* terminate with a decree pronouncing in favour of a will with executors. *Semble*, that the case is the same if there are no executors.—*Wieland v. Bird*, L.R. [1894] P. 262; 71 L.T. 267
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Quarterly Digest.

INDEX

of the cases reported during November and December, 1894, and
January, 1895.

Where a case has already been given in the Digest for a preceding quarter, the additional report is given after the name of the case, with a reference to the volume of the Digest in which it first appeared, the thick number being the number of the volume.

- ALLEN, *re*, 46, i.
Alabaster v. Harness (L.R. [1894] 2 Q.B. 897; 43 W.R. 196), **19**, 135, i.
Alt v. Lord Stratheden and Campbell (L.R. [1894] 3 Ch. 265; 63 L.J. Ch. 872), **20**, 28, iii.
Anderson v. City Mission (63 L.J. Ch. 772), **20**, 28, i.
— v. Gorrie, 43, iii.
Anglo-Austrian Printing Union, *re* (71 L.T. 331), **20**, 6, ii.
Argo, the, 51, vii.
Arms, goods of, 32, i.
Arrow Shipping Co. v. Tyne Improvement Commissioners, 56, vii.
Art Union of London v. Overseers of Savoy (63 L.J. M.C. 253), **20**, 17, vi.
Asten v. A. (L.R. [1894] 3 Ch. 260; 63 L.J. Ch. 834), **20**, 29, ii.
A.-G. v. Camberwell Vestry, 59, ii.
— v. Christ Church, 34, ix.
— v. Jacobs-Smith, 54, i.
— v. Worrall, 53, vii.
Australian Newspaper Co. v. Bennett (63 L.J. P.C. 105), **19**, 127, iii.

BAIRD v. MAYOR OF TUNBRIDGE WELLS (L.R. [1894] 2 Q.B. 867), **20**, 9, ii.
Bank of England, *e. p.*; *re*, S. American and Mexican Co., 41, i.
Bank of S. Australia, *re*, 38, i.
Bassett v. B., 49, v.
— v. St. Levan, 60, iii.
Beardmore, *e. p.*; *re* Clark (63 L.J. Q.B. 606), **19**, 116, vi.
Beauclerk v. B., 42, iv.

Bedfordshire County Council, *re*, 45, ii.
Bell v. Earl of Dudley, 42, vi.
Bentley Breweries, *e. p.*, 32, vi.
Bexley Railway Co., *re* (71 L.T. 533), **20**, 11, vii.
Black v. Clay (71 L.T. 446), **20**, 11, iv.
Blazer Fire Lighter, *re*, 38, iii.
Blyth Harbour Commissioners v. Newsham Churchwardens (63 L.J. M.C. 274), **20**, 17, vii.
Boake v. Stevenson, 50, vii.
Board of Trade, *e. p.*; *re* Lamb (63 L.J. Q.B. 715), **19**, 115, iii.
— *e. p.*; *re* — 33, ii.
Bolton & Co., *re*, 36, iii.
Bona, the, 56, ii.
Boyd v. Bischoffsheim, 49, iii.
Bradford (Mayor of) v. Pickles (71 L.T. 319), **20**, 27, vi.
Brewery Assets Co., *re* (L.R. [1894] 3 Ch. 272; 71 L.T. 328; 43 W.R. 73), **20**, 5, i.
Bridger v. Shaw, 31, iii.
Brierley v. B., 60, iv.
Briesemann, *goods of* (63 L.J. P. 159), **20**, 29, vi.
Brinsden v. Williams (L.R. [1894] 3 Ch. 185), **20**, 25, v.
Brooke v. B. (64 L.J. Ch. 21; 71 L.T. 398), **20**, 2, i.
Brooman v. Withall, 61, v.
Browne, *re*, 45, v.
Bruno v. Eyston, 49, i.
Budgett v. B. (63 L.J. Ch. 847; 71 L.T. 411; 43 W.R. 51), **20**, 20, iv.

INDEX OF CASES.

- Budgett v. B., 39, iv.
 Bunning v. Lyric Theatre, 39, ii.
 Burns-Burns (Trustee of) v. Brown, 33, i.
 Burt v. Bull, 53, ii.
 Bury v. Thompson, 43, vi.
- CADOGAN v. LYRIC THEATRE (L.R. [1894] 3 Ch. 338; 63 L.J. Ch. 775), 20, 19, iv.
- Canterbury (Mayor of) v. Wyburn, 35, i.
 Carr v. Ford, 34, iv.
 Castle Bytham (Vicar of), *e. p.*, 55, ii.
 Chamber Colliery Co. v. Rochdale Canal Co. (63 L.J. Q.B. 811; 71 L.T. 535), 20, 4, i.
 Chamberlain v. Springfield, 61, iv.
 Chaplin v. Daly, 33, v.
 Chapman v. Fyde Waterworks Co. (64 L.J. Q.B. 15; 71 L.T. 539; 43 W.R. 1), 20, 16, i.
 Chilton v. Progress Printing Co., 39, iii.
 China, &c., Bank v. American Trading Co. (63 L.J. P.C. 92), 19, 121, iii.
 Churchill v. St. George's Hospital, 61, ii.
 Clements v. L. & N.W.R. (63 L.J. Q.B. 837), 20, 11, i.
 Clergy Orphan Corporation, *re*, 34, viii.
 Cleveland Water Co. v. Redcar Local Board, 45, iii.
 Collingham v. Sloper, 49, iv.
 Collins v. North British Investment Co. (L.R. [1894] 3 Ch. 228), 20, 20, iii.
 Collis v. Laughor (L.R. [1834] 3 Ch. 659; 63 L.J. Ch. 851; 43 W.R. 202), 20, 9, iii.
- DANIELL'S SETTLED ESTATES, *re*, 55, i.
 Darlaston Local Board v. L. and N.W.R., 53, i.
 Davies v. R. Bolton & Co., 35, vi.
 Davis v. Foreman, 42, vii.
 — v. Martin (L.R. [1894] 3 Ch. 181; 63 L.J. Ch. 810), 20, 5, iv.
 Daykin v. Parker (63 L.J. M.C. 246; 71 L.T. 379), 20, 12, ii.
 Dayman v. D., 61, vii.
 Debney v. Eckett, 60, i.
 Dechêne v. City of Montreal, 35, iii.
 Delhi Steamship Co., *re*, 38, ii.
 Denver Hotel Co. v. Andrews, 54, v.
 Derby (Mayor of) v. Grudgings (43 W.R. 74), 20, 13, iii.
- Diana, the* (L.R. [1894] A.C. 625), 20, 23, i.
 Doncaster Assessment Committee v. M. & S.L.R., 48, viii.
 Drielsma v. Manifold (L.R. [1894] 3 Ch. 100), 20, 25, iv.
 Dunster, *e. p.*; *re* Glory Paper Mills Co., 36, iv.
 Dyer v. Tulley, 54, ii.
- EARNSHAW-WALL, *re* (L.R. [1894] 3 Ch. 156; 63 L.J. Ch. 836), 20, 25, ii.
 East London Waterworks Co. v. Kyffin, 59, iii.
 Ecclesiastical Commissioners v. Parr (63 L.J. Q.B. 784), 20, 7, iv.
 Eckersley v. Mersey Dock Board (71 L.T. 308), 20, 2, iii.
 Edwards v. E., 60, vii.
 Ehrmann v. E., 48, ii.
 Eliot v. Mayor of Bristol, 58, ii.
 Elmsley v. Mitchell, 35, ii.
Englishman, the (63 L.J. P. 133; 43 W.R. 62), 20, 24, v.
- FIGG v. MOORE (63 L.J. P. 709), 20, 2, vi.
 Foden v. F. (L.R. [1894] P. 307; 63 L.J. P. 163), 20, 10, vii.
 Forbes v. Hume, 60, vi.
 Fordom v. Parsons, 45, i.
 Fortescue v. Lestwithiel Railway Co., 52, v.
 Foster v. L.C. & D.R., 52, iv.
 Franklin v. Godfrey, 59, v.
 Freer v. Murray, 43, vii.
 Frodingham Iron Co. v. Bowser, 41, vi.
- GENERAL PHOSPHATE CO., *re*, 38, ii.
Georg, the (L.R. [1894] P. 330), 20, 24, iv.
 Gerard (Lord) v. L. & N.W.R., 52, vi.
 — and Beecham, *re* (L.R. [1894] 3 Ch. 295), 20, 26, vi.
 Glamorgan County Council v. G.W.R., 52, iii.
 Graham v. Noakes, 51, iv.
 Grainger v. Gough, 54, iv.
 Grand Junction Waterworks Co. v. Brentford Local Board (63 L.J. Q.B. 717), 20, 27, iv.
 Gray v. Bartholomew, 51, iii.
 Grosvenor Hotel Co. v. Hamilton (L.R. [1894] 2 Q.B. 836; 71 L.T. 362), 20, 11, v.
 Guild v. Conrad (L.R. [1894] 2 Q.B. 885; 63 L.J. Q.B. 721), 20, 10, iv.

- Guilford v. Lambeth (L.R. [1894] 2 Q.B. 832; 43 W.R. 45), **20**, 18, v. ———, 49, vii.
- Guyot v. Thomson, 48, iv.
- Gwynne v. Drewitt (63 L.J. Ch. 870), **20**, 25, vii.
- HALLETT v. NATIONAL INSURANCE CO. (71 L.T. 408), **20**, 3, ii.
- Hambro v. H. (43 W.R. 92), **19**, 126, ii.
- Hamilton v. Vaughan - Sherrin Electric Engineering Co., 37, iv.
- Hanbury v. H. (L.R. [1894] P. 315), **19**, 124, vi.
- Hansen v. Harrold (63 L.J. Q.B. 744), **19**, 103, iii.
- Harrison v. Barney (L.R. [1894] 3 Ch. 562; 43 W.R. 105), **20**, 26, v.
- Hanfstaengl v. Empire Palace (L.R. [1894] 3 Ch. 109), **20**, 7, vi.
- Herefordshire County Council v. Leominster Town Council, 44, ii.
- Hewison v. Ricketts (63 L.J. Q.B. 711), **20**, 7, i.
- Hinchliffe, *re*, 45, iv.
- Hirsche v. Sims, 35, iv.
- Hoggan v. Esquimault Railway Co. (63 L.J. P.C. 97), **20**, 4, iii.
- Highgate School v. Sewell (L.R. [1894] 2 Q.B. 706; 63 L.J. Q.B. 320), **20**, 11, vi.
- Hollinrake v. Truswell (L.R. [1894] 3 Ch. 420; 71 L.T. 419), **20**, 7, v.
- Holmes v. Formesby, 46, v.
- Hood-Barrs v. Cathcart (63 L.J. Q.B. 798), **20**, 14, iii.
- v. ——— (L.R. [1894] 3 Ch. 376; 63 L.J. Ch. 793), **20**, 14, vi.
- v. ——— (63 L.J. Ch. 897), **20**, 25, vi.
- , *e. p.*; *re* Lumley, 45, vi.
- Hough v. H., 42, ii.
- Huffam v. North Staffordshire Railway Co., 52, ii.
- Hull Docks Co. v. Sculcoates Union (63 L.J. M.C. 279), **19**, 133, ii.
- v. ———, 48, vii.
- Hunt v. H. (63 L.J. P. 136), **20**, 18, vii.
- Hutchinson v. Barker, 51, ii.
- Hydarnes S.S. Co. v. Indemnity Mutual Assurance Co. (63 L.J. Q.B. 705), **20**, 24, i.
- Hyslop v. Chamberlain, 31, i.
- IND, COOPE & Co. v. KIDD (63 L.J. Q.B. 726), **20**, 21, iv.
- Isaacs v. Reginall (L.R. [1894] 3 Ch. 506; 63 L.J. Ch. 873; 71 L.T. 386), **20**, 7, ii.
- Islington Vestry v. Cobbett, 46, v.
- Issue Co., *re*, 36, ii.
- JOHNSON v. NEWNES (L.R. [1894] 3 Ch. 663; 63 L.J. Ch. 786), **20**, 7, viii.
- Juno, the*, 56, vi.
- Katy, the*, 55, v.
- Kelly, *re*, 57, ii.
- v. Isle of Man Steam Packet Co., 56, i.
- Keen v. Denny, 40, v.
- Kemp, *e. p.*; *re* Peruvian Guano Co., 36, v.
- v. Wright, 34, vii.
- Kennedy v. Thomas (63 L.J. Q.B. 761), **20**, 3, iv.
- Kerr, *re*, 40, vi.
- King and Beesley, *re*, 33, viii.
- Kitts v. Moore, 32, iii.
- Knapp v. Vassall, 55, iv.
- Kops v. The Queen (L.R. [1894] A.C. 650), **20**, 9, i.
- LAMBERTON v. MELLISH, 48, i.
- Laver v. Bootham, 48, vi.
- Le Bas v. Herbert (L.R. [1894] 3 Ch. 250; 43 W.R. 190), **20**, 1, i.
- Lemmon v. Webb, 47, vii.
- Liberator Building Society, *re*, 36, vi.
- Lindsay v. Rook, 82, ii.
- Lloyd v. Tardy, 61, i.
- London & General Bank, *re*, 50, v.
- L.C.C. v. Humphreys (43 W.R. 13), **20**, 15, iii.
- v. St. George's Assessment Committee, 48, ix.
- v. Worley, 46, vi.
- London Street Tramways Company v. L.C.C., 58, v.
- Long v. Gardner, 49, ii.
- Lovejoy v. Cole, 40, ii.
- Lovell v. Beauchamp, 33, vii.
- Lysaght v. Coleman, 56, iii.
- McILQUHAM v. TAYLOR, 39, i.
- Main, the* (L.R. [1894] P. 320), **19**, 104, i.
- Malam, v. Hitchens, 57, vii.
- Malleson v. General Mineral Patents Syndicate, 37, iii.
- Maplin Sands, *re*, 50, vi.
- Martindale, *re*, 38, vi.
- Mason, *e. p.*; *re* Isaacson, 33, vi.
- Maund, *e. p.*, 33, x.
- May v. Lane, 32, v.

- Mecca, the*, 55, vii.
 Mellin v. White, 42, viii.
 Meunier, *re* (71 L.T. 403), 20, 10, ii.
 Meyrick v. A. G. (L.R. [1894] 3 Ch. 209), 20, 13, iii.
 Midland Coal Co., *re* Craig's Case, 37, ii.
 Mills v. Johnston (L.R. [1894] 3 Ch. 204; 63 L.J. Ch. 753; 71 L.T. 392), 20, 28, vi.
 Minnie, *the*, 56, v.
 Mohideen Hadjar v. Pitchey (63 L.J. P.C. 90), 20, 9, v.
 Minter v. Carr (L.R. [1894] 3 Ch. 498; 71 L.T. 526), 20, 15, v.
 Mona, *the* (L.R. [1894] P. 265; 63 L.J. P. 94; 43 W.R. 173), 20, 23, ii.
 Montforts v. Marsden, 57, iv.
 Morgan v. Hill (71 L.T. 327), 20, 26, ii.
 — v. —, 57, vi.
 NATIONAL DWELLINGS Co. v. SYKES (L.R. [1894] 3 Ch. 159; 63 L.J. Ch. 906), 20, 5, iii.
 — Provincial Bank and Marsh, *re*, 58, vii.
 — Folding Box, &c., Co. v. N. Folding Box Co., 58, iv.
 — Starch Co. v. Munn's Maizena Co. (63 L.J. P.C. 112), 19, 143, iv.
 Negus, *re*, 57, i.
 Neptune Steam Navigation Co. v. Sclater, 55, vi.
 Neville v. Matthewman (L.R. [1894] 3 Ch. 345; 63 L.J. Ch. 734), 20, 20, i.
 New v. Burns, 50, iii.
 Newby v. Sims (63 L.J. M.C. 228), 19, 70, vi.
 New Zealand Loan Co., *re*, 38, iv.
 Newen v. Barnes (63 L.J. Ch. 763; 43 W.R. 58), 19, 139, v.
 Nordenfeldt, *re*, 34, ii.
 — v. Maxim-Nordenfeldt Guns, &c., Co., 53, vi.
 Norton v. Counties Building Society, 32, iv.
 Nottingham County Council v. M.S. and L.R., 41, v.
 Nutter v. Holland, 50, ix.
 Noyes v. Paterson (L.R. [1894] 3 Ch. 267; 63 L.J. Ch. 748), 20, 27, ii.
 OLIVER v. ROBINS, 39, v.; 49, vi.
Oriente, the, 56, iv.
 Owen, *re* (L.R. [1894] 3 Ch. 220; 63 L.J. Ch. 749; 43 W.R. 55), 20, 12, v.
 PAINTER, *e. p.*; *re* P., 33, ix.
 Parker v. Young, 34, i.
 Patten v. West of England Iron, &c., Co. (63 L.J. Q.B. 757), 19, 114, ii.
 Peake's Settled Estates, *re*, 54, vi.
 Peek v. Ray, 50, i.
 Pharmaceutical Society v. Armson (64 L.J. Q.B. 32; 71 L.T. 315), 20, 17, iii.
 Pilbrow v. Shoreditch Vestry, 46, ii.
 Pledge v. Carr, 47, v.
 Plomley v. Richardson, 35, v.
 Portsea Island Building Society v. Barclay (63 L.J. Ch. 837), 20, 3, vi.
 Powell v. Birmingham Vinegar Co., 58, iii.
 Printing Telegraph Co. v. Drucker (L.R. [1894] 2 Q.B. 801; 64 L.J. Q.B. 58), 20, 19, i.
 Preston Banking Co. v. Alsop, 50, viii.
 RAILWAY TIME TABLE PUBLISHING Co., *re*, 37, v.
 Read, *re* (L.R. [1894] 3 Ch. 238; 63 L.J. Ch. 831), 20, 25, iii.
 Reg. v. Bennett, 41, ii.
 — v. Brown, 41, iii.
 — v. Chadwick, 53, iii.
 — v. Chew, 54, iii.
 — v. Dennis (71 L.T. 436), 20, 20, v.
 — v. Essex Justices (63 L.J. M.C. 250; 43 W.R. 183), 20, 17, iv.
 — v. Fowler, 40, iv.
 — v. Herring (63 L.J. M.C. 230), 20, 15, ii.
 — v. L.C.C., 44, v.
 — v. Ormesby Board of Health, 44, iii.
 — v. Patterson, 58, i.
 — v. Rowe, 41, iv.
 — v. Silverlock (63 L.J. M.C. 233; 43 W.R. 14), 20, 8, v.
 — v. Taylor, 40, iii.
 — v. Torquay Justices, 43, iv.
 — v. Williams, 47, ii.
 Reid v. Wilson (64 L.J. Q.B. 55; 43 W.R. 47), 20, 26, i.
 — v. —, 57, v.
 Reischer v. Borwick (63 L.J. Q.B. 753), 20, 23, v.
 Rendell v. Grundy, 50, iv.
 Rent Collecting Co. v. Troughton, 37, vi.
 Rhodes v. Moules, 57, iii.

- Robinson v. Geisel (64 L.J. Q.B. 52),
20, 19, vii.
— v. Lynes (63 L.J. Q.B. 759;
43 W.R. 62), 20, 14, iv.
— v. Shaw (63 L.J. Ch. 770;
43 W.R. 3), 20, 14, ii.
Rochdale Canal Co. v. Brewster
(L.R. [1894] 2 Q.B. 852; 64 L.J.
Q.B. 37), 20, 17, v.
Rogers v. Harding (L.R. [1894] 3
Ch. 315), 20, 18, i.
Roscoe v. Boden (63 L.J. Q.B. 767),
19, 88, iv.
Rose v. Bank of Australasia (L.R.
[1894] A.C. 687), 19, 141, iii.
Ross v. White (L.R. [1894] 3 Ch.
326; 64 L.J. Ch. 48), 20, 16, iii.
Rouse v. Bradford Bank, 48, iii.
Royal Bank of Scotland v. Totten-
ham (43 W.R. 22), 20, 4, ii.
Rymer v. Stanfield, 60, ii.
- ST. MARTIN'S VESTRY v. BIRD, 46, iii.
St. Peter's Vicar v. Parishioners,
40, vii.
Sanders, *e. p.*; *re* S. (63 L.J. Q.B. 734),
20, 8, i.
Sanguinetti v. Stuckey's Bank, 34, iii.
Saunders v. Holborn Board of
Works, 46, iv.
Schreiber v. Heyman, 49, viii.
Scobie v. Collins, 47, iv.
Scott v. Bould, 47, iii.
Securities Insurance Co., *re* (63
L.J. Ch. 770), 19, 134, vi.
Semet's Patent, *re*, 48, v.
Sewers, Commissioners of, v. Vicar
of St. Botolph, 88, v.
Shenstone v. Hilton (71 L.T. 339),
20, 10, iii.
Sinclair v. James, 51, i.
Sir T. Salt's Application, *re* (L.R.
[1894] 3 Ch. 265; 63 L.J. Ch. 756),
20, 26, iv.
Sirdar Gwrdyal Singh v. Rajah of
Faridkote, 48, i.
Skelton v. Wood, 52, i.
Skinner v. Perry (63 L.J. Ch. 826),
20, 17, i.
Sleet, *e. p.*; *re* S., 33, iv.
Smith v. Lancaster, 54, vii.
Smurthwaite v. Hannay (L.R.
[1894] A.C. 494; 63 L.J. Q.B. 787;
43 W.R. 113), 20, 19, vi.
Snaith v. S. (71 L.T. 318), 20, 29, iv.
Somerset v. Land Securities Co.,
87, i.
Southampton (Sheriff of), *e. p.* (63
L.J. Q.B. 756), 20, 22, iv.
Starkey v. Eyres, 60, v.
- Storer v. S., 42, i.
Sweet v. S., 42, v.
Sydney Local Board v. Lyons (63
L.J. P.C. 108), 19, 119, ii.
— Town Council v. A.-G. for
New South Wales (63 L.J. P.C.
116), 20, 4, iv.
- TARBUCK, *e. p.*, 34, v.
Tasker v. T., 42, iii.
Taylor v. M.S. & L.R., 40, i.
Teresa, *the*, 55, viii.
Theta, *the* (L.R. [1894] P. 281; 63
L.J. P. 160), 20, 23, iii.
Thomasset v. T. (L.R. [1894] P. 295;
63 L.J. P. 140), 20, 10, v.
Thorne v. Cann, 47, vi.
Thorne-George v. Godfrey (63 L.J.
Ch. 854; 71 L.T. 568), 20, 14, vii.
Treadgold v. Town Clerk of
Grantham, 53, iv.
Truman, Hanbury, Buxton & Co.
v. Karslake, 44, vi.
Trustee, *e. p.*; *re* Marsh, 33, iii.
Tucker v. T., 58, vi.
Tullett v. Colville, 61, vi.
Turner v. Spencer, 44, i.
Tuticorin Cotton Press Co., *re*,
86, i.
Tyrell v. Painton, 50, ii.
- UNDERWOOD v. LEWIS (64 L.J. Q.B.
60), 19, 142, v.
- VINEX, *e. p.*; *re* ADAMSON, 82, vii.
Victoria, *e. p.*; *re* V. (63 L.J. Q.B. 795),
19, 116, ii.
- WALFORD v. HACKNEY BOARD OF
WORKS, 47, i.
Walker v. Lambeth Waterworks Co.
(63 L.J. Ch. 874), 20, 37, iii.
Wallis v. Bendy, 55, iii.
Warren v. Murray (64 L.J. Q.B. 42;
71 L.T. 458; 43 W.R. 8), 20, 12, iii.
— v. Maule, 53, v.
Wegg-Prosser v. Evans (63 L.J. Q.B.
729), 19, 126, i.
— v. —, 43, ii.
Welby v. Still, 56, viii.
West Surrey Water Co. v. Chertsey
Guardians, 59, iv.
White v. Rubery, 84, vi.
Whitwham v. Piercy, 61, iii.
Wieland v. Bird (63 L.J. P. 162), 20,
80, ii.
Wigram v. Buckley (L.R. [1894]
3 Ch. 483; 43 W.R. 147), 20, 15, vii.
— v. Cox (63 L.J. Q.B. 751),
19, 136, iii.

Williams v. Cartwright, 51, v.

_____ v. Torrey (L.R. [1894] P.
342), 20, 23, iv.

Wilson and Stephens, *re*, 59, i.

_____, *e. p.*; *re* Dunhill (64 L.J.
Q.B. 64), 20, 2, v.

Winnipeg Street Railway Co. v. W.
Electric Railway Co. (L.R. [1894]
A.C. 615), 20, 21, i.

Wood v. Cooper (L.R. [1894] 3 Ch.
671; 63 L.J. Ch. 845; 43 W.R. 201),
20, 12, i.

Woodroffe v. Moody, 31, ii.

Wycombe Union v. Parsons, 44, iv.

YORKSHIRE COUNTY COUNCIL v. HOLM-
FIRTH LOCAL BOARD (L.R. [1894] 2
Q.B. 842), 19, 131, vi.

Quarterly Digest

OF

ALL REPORTED CASES,

IN THE

Law Reports, Law Journal Reports, Law Times
Reports, and Weekly Reporter,

FOR NOVEMBER AND DECEMBER, 1894, AND JANUARY, 1895.

By C. H. LOMAX, M.A., of the Inner Temple,
Barrister-at-Law.

Administration:—

- (i.) **Ch. D.—Debt—Evidence—Unexecuted Testamentary Paper.**—A testator, in a letter of instructions to his executor, stated that a debt from the executor was cancelled. The letter was not communicated to the debtor during the testator's lifetime, and was not executed as a will. *Held*, that it could not be received as evidence of the cancellation of the debt, which was still payable.—*Hyslop v. Chamberlain*, L.R. [1894] 3 Ch. 522; 43 W.R. 6.
- (ii.) **Ch. D.—Legacy—Interest—Infant—Provision for Maintenance.**—A testator bequeathed legacies to two infant children, payable at twenty-one, and gave his residue upon trust for his children equally. He gave power to trustees to raise half of any child's share for his advancement, preferment, or benefit. There was no power of maintenance, but the provisions of sect. 43 of the Conveyancing Act, 1882, were applicable. *Held*, that such section ought to be read as part of the will, but that there was nothing to displace the general rule as to legacies to infant children, and that accordingly the legacies to the infants carried interest from the testator's death.—*Woodroffe v. Moody*, L.R. [1895] 1 Ch. 101.
- (iii.) **Ch. D.—Order of Probate Division—Costs “Out of Estate”—Liability of Real Estate.**—A will containing specific devises of realty, but no residuary devise, was established against the heir-at-law by a judgment of the Probate Division, which ordered payment of his costs “out of the estate.” *Held*, in an administration action, that the order meant out of the personal estate only, and that, the personal estate being insufficient, none of the costs of the Probate action were payable out of the real estate.—*Bridger v. Shaw*, L.R. [1894] 3 Ch. 615; 64 L.J. Ch. 47; 71 L.T. 515; 43 W.R. 159.

C

- (i.) **P. D.—Will Annexed—Beneficiary.**—By will the testatrix gave all her property to J. B. for her own use and for the education, &c., of her son H. B., and, in case of the death of J. B. during the minority of H. B., directed her executor to invest the proceeds of her property "for his use and benefit till he shall attain the age of twenty-one, when whatever remains shall be handed over to him." J. B. died before the testatrix, but after H. B. had attained twenty-one. The executor renounced, there were no known next-of-kin, and the Queen's Proctor declined to interfere. Administration with the will annexed was granted to H. B.—*In the goods of Arms*, 71 L.T. 699.

Adulteration :—

- (ii.) **Q. B. D.—Sale of Food and Drugs Act, 1875, ss. 6, 25—Written Warranty.**—The appellant bought a cask of vinegar from G and Co. The cask was labelled "vinegar warranted unadulterated—G. and Co.," and the vinegar was invoiced as "G.'s vinegar." *Held*, that there was a sufficient written warranty to protect the appellant.—*Lindsay v. Rook*, 63 L.J. M.C. 231.

Arbitration :—

- (iii.) **C. A.—Agreement Impeached—Injunction to Restrain Arbitration.**—When an agreement containing an arbitration clause is impeached in an action, the Court may restrain arbitration proceedings under the clause until the trial of the action.—*Kitts v. Moore & Co.*, 71 L.T. 676; 43 W.R. 84.
- (iv.) **C. A.—Appointment of Arbitrators after Issue of Writ—Building Society—Building Societies Act, 1874, ss. 16 (9), 34.**—The rules of a building society provided for the appointment of a board of arbitrators, to be elected and filled up by the directors, to decide disputes between the society and its members. A withdrawing member brought an action for the amount he claimed, which was disputed by the directors. The board of arbitrators was then incomplete, but was afterwards filled up by the directors, who had previously taken out a summons for a reference to arbitration. *Held*, that all proceedings should be stayed, and the dispute referred to arbitration.—*Norton v. Counties Conservative Permanent Benefit Building Society*, 43 W.R. 178.

Assignment :—

- (v.) **C. A. & Q. B. D.—Equitable—Building Agreement—Contract by Lessor to make Advances.**—An agreement by a lessor to advance money by instalments to a builder, to be employed in erecting buildings on his land, is a mere agreement for a loan, and money due under such an agreement cannot be effectually assigned.—*May v. Lane*, 43 W.R. 58.

Bankruptcy :—

- (vi.) **Q. B. D.—Act of.**—A circular by a trader to his customers held to be a notice of intention to suspend payment within sect. 4 (h) of the Bankruptcy Act, 1883.—*E. p. Bentley Breweries; in re Waite*, 43 W.R. 208.
- (vii.) **Q. B. D.—Act of—Deed of Assignment—Privity of Petitioning Creditor.**—The debtor executed a composition deed providing for payment of a composition, and for the execution of a deed of assignment in case of default, and the petitioning creditor assented thereto. Default was made, and the debtor executed a deed of assignment not according to the terms of the composition deed. The petitioning creditor dissented therefrom, and alleged the execution of the deed as

an act of bankruptcy. *Held*, that he could not rely on it as an act of bankruptcy, since its execution had been demanded by the trustee of the composition deed, as agent for the petitioner, and for the other creditors who assented to that deed.—*E. p. Viney; in re Adamson*, 71 L.T. 579; 43 W.R. 192.

- (i.) **C. A.**—*Act of—Goods taken in Execution—Notice to Execution Creditor—Bankruptcy Acts, 1883, s. 45; 1890, ss. 1, 11 (2).*—When the sheriff has been in possession of a debtor's goods for more than twenty-one days there is an available act of bankruptcy known to the execution creditor, and he cannot therefore retain the proceeds of the execution as against the trustee in bankruptcy.—*Burns-Burns (Trustee of) v. Brown*, 43 W.R. 195.
- (ii.) **C. A.**—*Appointment of Trustee.*—Decision of Q. B. D. (*see* Vol. 19, p. 115, iii.) reversed.—*E. p. Board of Trade; in re Lamb*, L.R. [1894] 2 Q.B. 805; 71 L.T. 312.
- (iii.) **Q. B. D.**—*Costs—Small Bankruptcy—Bankruptcy Rules, 1886, r. 112 (2).*—The word "proceedings" in the rule above-mentioned includes litigious proceedings.—*E. p. The Trustee; in re Marsh*, 43 W.R. 208.
- (iv.) **C. A.**—*Deceased Debtor—Order for Administration—Jurisdiction—No Legal Personal Representative Appointed before Petition—Bankruptcy Act, 1883, s. 125.*—An order for the administration in bankruptcy of the estate of a deceased debtor may be made upon a petition served before the grant of probate or letters of administration, if at the time of the making of the order there is a duly appointed legal personal representative before the Court.—*In re Sleet; e. p. Sleet*, L.R. [1894] 2 Q.B. 797; 63 L.J. Q.B. 750; 71 L.T. 381.
- (v.) **Q. B. D.**—*Deed of Arrangement—Registration—Secured Creditors—Omission of Names—Deeds of Arrangement Act, 1887, ss. 4, 6, 19.*—The affidavit of the debtor filed with a deed of arrangement, and stating the names and addresses of his creditors, may omit the creditors whose debts are secured.—*Chaplin v. Daly*, 71 L.T. 569.
- (vi.) **Q. B. D.**—*Hire Agreement—Assignment of—Bills of Sale Act, 1878, s. 8.*—The bankrupt had executed a deed of assignment of a piano and of the hire agreement whereby he had let it. The deed was not registered as a bill of sale. *Held*, that so far as concerned the hire agreement it was valid as against the trustee in bankruptcy.—*E. p. Mason; in re Isaacson*, 71 L.T. 583; 43 W.R. 128.
- (vii.) **H. L.**—*Infant Partner in Firm.*—(*See* Vol. 19, p. 83, iii.) Decision of C. A. varied. Ordered that the judgment in the action be amended by adding the words "other than" the infant, after the word defendant; and that the bankruptcy proceedings be amended in conformity therewith by adding after the firm name the words "other than" the infant.—*Lovell v. Beauchamp*, L.R. [1894] A.C. 607; 63 L.J. Q.B. 802; 71 L.T. 587; 43 W.R. 129.
- (viii.) **Q. B. D.**—*Petitioning Creditor's Debt—Merger—Bankruptcy Act, 1883, s. 7 (2), (3).*—A debt, though merged in a higher security, such as a judgment, will support a bankruptcy petition.—*In re King and Beesley*, 71 L.T. 580; 43 W.R. 78.
- (ix.) **Q. B. D.**—*Petition by Debtor.*—The presentation of a bankruptcy petition by a debtor for his own benefit is not an abuse of the process of the Court, and he ought to be adjudicated bankrupt thereon.—*E. p. Painter; in re Painter*, L.R. [1895] 1 Q.B. 85; 64 L.J. Q.B. 2; 71 L.T. 581; 43 W.R. 144.
- (x.) **Q. B. D.**—*Petition—Amendment.*—A bankruptcy petition cannot be amended by adding creditors more than three months after the act of bankruptcy alleged.—*E. p. Maund; in re Maund*, 43 W.R. 207.

- (i.) **Q. B. D.**—*Proof—Appropriation of Payments—Interest.*—Sect. 23 of the Bankruptcy Act, 1890, does not affect the rule that where a debtor does not appropriate his payments either to interest or principal, the creditor may appropriate the first payments to interest, and the later ones to principal.—*Parker v. Young*, 71 L.T. 435; 43 W.R. 16.
- (ii.) **C. A.**—*Receiving Order—Domicile of Debtor—Dwelling-House—Bankruptcy Act, 1883, s. 6, sub-s. 1 (d).*—A debtor who has resided in a house of his own in England, but has gone to reside abroad, and has abandoned the house as his residence for more than a year before the presentation of a petition against him, and has not again adopted it as his residence, though he might have resided in it within the year, had he chosen to do so, cannot be considered to have had a "dwelling-house" in England within the prescribed period.—*In re Nordenfeldt*, L.R. [1895] 1 Q.B. 151; 71 L.T. 565.
- (iii.) **Ch. D.**—*Voluntary Settlement—Avoidance—Puisne Incumbrancers—Bankruptcy Act, 1883, s. 47.*—The avoidance of a voluntary settlement in bankruptcy proceedings does not give the settlor's trustee in bankruptcy any priority over puisne incumbrancers.—*Sanguinetti v. Stuckey's Bank*, 43 W.R. 154.
- (iv.) **Q. B. D.**—*Warehouseman's Lien—Custom of Bristol.*—By the custom of the city of Bristol a warehouseman is entitled to a general lien on all the goods which are the property of the depositor and warehoused with him, for all warehouse rent, labourage and other charges, in connection with such goods or with other goods warehoused by the same person either before or after.—*Carr v. Ford*, 71 L.T. 584; 43 W.R. 159.

Bill of Sale:—

- (v.) **Q. B. D.**—*Consideration—True Statement.*—Six persons joined to lend £600 to S. They made their advances at different times, and in different amounts. When the whole £600 had been advanced, S. gave a bill of sale to T., one of the six, the consideration being stated as "£600 now paid by T." *Held*, that the consideration was truly stated, and that T. was not a trustee, but merely a collector.—*E. p. Tarbuck*; *in re Smith*, 43 W.R. 206.
- (vi.) **Q. B. D.**—*Entry of Satisfaction—Affidavit of Verification.*—The affidavit verifying the signature and consent of the person entitled to the benefit of a bill of sale to the entry of satisfaction thereof need not be made by a solicitor.—*White v. Rubery*, L.R. [1894] 2 Q.B. 923; 71 L.T. 614.

Building Society:—

- (vii.) **C. A.**—*Instrument of Dissolution—Variation of Rights—Building Societies Act, 1874, s. 32.*—Decision of Ch. D. (*see* Vol. 20, p. 3, v.) reversed.—*Kemp v. Wright*, 64 L.J. Ch. 59; 71 L.T. 650.

Charity:—

- (viii.) **C. A.**—*Compulsory Sale of Land—Voluntary Subscriptions—Endowment.*—Decision of Ch. D. (*see* Vol. 19, p. 117, v.) affirmed.—*In re Clergy Orphan Corporation*, L.R. [1894] 3 Ch. 145; 64 L.J. Ch. 66; 71 L.T. 450; 43 W.R. 150.
- (ix.) **Ch. D.**—*Exhibitions at College—Endowed School—Jurisdiction of Commissioners—Endowed Schools Acts, 1869, 1873, 1874.*—Property was held on trust to provide exhibitions at Oxford for scholars from certain schools, one of which, Shrewsbury, was a public school, and the others endowed schools. *Held*, that the exhibitions were educational endowments, and formed part of the endowments of the schools, and that as

Shrewsbury school was not solely interested in the endowment, the Charity Commissioners had jurisdiction to make a scheme for the charity, and that the jurisdiction of the Court was excluded.—*Attorney-General v. Dean and Canons of Christ Church*, L.R. [1894] 3 Ch. 524; 63 L.J. Ch. 901; 71 L.T. 468; 43 W.R. 198.

- (i.) **P. C.**—*Mortmain—Colonial Law*.—An English statute will not be held to avoid a bequest in a colonial will on the ground that it is against the local law of England, without very clear ground appearing in such statute. The English statutes of mortmain do not operate to avoid a gift of money to a charity in a valid colonial will coupled with an obligation to lay it out in land.—*Mayor of Canterbury v. Wyburn*, 71 L.T. 554.
- (ii.) **C. A.**—*Mortmain—Corporation Stock*.—Decision of Ch. D. (see Vol. 19, p. 77, ii.) affirmed.—*Elmsley v. Mitchell*, L.R. [1894] 3 Ch. 704; 71 L.T. 558.

Colonial Law:—

- (iii.) **P. C.**—*Canada—Quebec Act—Time for Complaining—Expiry*.—The right of a municipal elector to demand the annulment of the corporate appropriation for expenditure on the ground of illegality absolutely expires within three months from the date thereof, and cannot be extended by any procedure clause (see sect. 3 of the Civil Procedure Clause) which presupposes an existing right of action, and regulates its exercise.—*Dechéne v. City of Montreal*, L.R. [1894] A.C. 640; 71 L.T. 354.
- (iv.) **P. C.**—*Cape of Good Hope—Company—Issue of Shares at a Discount—Damages*.—Directors of a company *bonâ fide* agreed, in consideration of services rendered, to issue shares at a discount. The shares were allotted, and the amount paid up less the discount. The allottee sold them to *bonâ fide* purchasers at a profit. *Held*, that the directors were liable to the company, but only for the discount allowed, there being no fraud proved, nor any further resulting damage to the company.—*Hirsche v. Sims*, L.R. [1894] A.C. 664; 71 L.T. 357.
- (v.) **P. C.**—*New South Wales—New Trustees—Appointment of—Vesting*.—Where an application for the appointment of a new trustee in place of one incapacitated is, in the opinion of the Court, duly made and served, the Court has power to direct the master to make the appointment, and the vesting of the property follows without further order.—*Plomley v. Richardson*, L.R. [1894] A.C. 632; 71 L.T. 377.

Company:—

- (vi.) **Ch. D.**—*Debenture—Issue—Irregularity—Valuable Consideration—Directors' Authority*.—By one of the articles of a company it was provided that any debenture bearing the seal of the company and issued for valuable consideration, should bind the company notwithstanding any irregularity touching the authority of the directors or officers to issue the same. The company owed B., a director, a sum of money with interest at 6 per cent., and B. owed D. a smaller sum. It was arranged that the company should issue to B. a debenture, with 5 per cent. interest, for the amount of his debt to D., and that he should transfer it to D. The debenture bore the company's seal and was signed by B. and countersigned by the secretary. There were minutes of a directors' meeting at which the issue and sealing of the debenture were authorised. *Held*, that the debenture was given for valuable consideration, and that the irregularity in its issue was cured by the article mentioned.—*Davies v. R. Bolton & Co.*, L.R. [1894] 3 Ch. 678; 63 L.J. Ch. 743; 71 L.T. 336; 43 W.R. 171.

- (i.) **Ch. D.—Deceased Shareholder—Scotch 'Sequestration—Title to Shares.**—A domiciled Scotchman was, at the time of his death, the registered holder of shares (of which he was trustee) in an English company. After his death a Scotch sequestration was issued against his estate, and a trustee was appointed. By Scotch law the legal interest in the shares was vested in him. *Held*, that the title to the shares was sufficiently vested in the sequestrator, and that no order under O. xvi., r. 46, to dispense with a legal personal representative was necessary.—*In re Tuticorin Cotton Press Co.*, 71 L.T. 723; 43 W.R. 190.
- (ii.) **Ch. D.—Director—Qualification Shares—Agreement to Take.**—The articles of a company provided that a director should vacate office if he failed to acquire the qualification shares within a specified time. A. was appointed a first director, and accepted office, and acted to some extent, but never applied for shares, nor were any allotted to him. The company never did any business and did not go to allotment; it was wound up. *Held*, that there was no agreement by A. to take shares from the company, but only to acquire them, and that as the company never went to allotment, a reasonable time for acquiring the shares had not elapsed, and that A. ought not to be on the list of contributories.—*In re Issue Company; Hutchinson's Case*, 71 L.T. 667.
- (iii.) **C. A.—Director—Qualification Shares—Time for Acquiring.**—The articles of a company provided that a director should acquire his qualification shares within three months from his appointment. The signatories to the articles were to be directors till six of them should nominate another director in their place. The six signatories appointed another director within three months of their appointment. Two of them never otherwise acted as directors, and never acquired their qualification shares. *Held*, that directors who resigned within three months were not bound to take the qualification shares.—*In re R. Bolton & Co.*, L.R. [1894] 3 Ch. 356; 64 L.J. Ch. 27.
- (iv.) **C. A.—Director—Qualification Shares—Joint Holding.**—A firm agreed to become agents for a company and to take 100 shares. A member of the firm signed the memorandum of association in his own name. He became a first director, the director's qualification being 100 shares. The firm made application for 100 shares, which were allotted. This allotment was treated as a satisfaction of the partner's subscription. *Held*, in the winding-up, that the partner was not liable, either by reason of his subscription or as director, to take another 100 shares.—*E. p. Dunster; in re Glory Paper Mills Co.*, L.R. [1894] 3 Ch. 473; 68 L.J. Ch. 885; 71 L.T. 528; 43 W.R. 164.
- (v.) **Ch. D.—Dividend—Net Profits—Estimate—Directors' Remuneration.**—The articles of a company provided that the net profits should be applied in payment of a certain dividend, and that ten per cent. of the surplus should be paid to the directors. In 1883 resolutions declaring a dividend were passed. The dividend was chiefly payable out of a fund made up of the estimated value of certain claims, which eventually turned out to be worthless. The proceedings were perfectly regular, and no improper motive was attributed to anyone. The directors claimed ten per cent. on the balance of the said fund. On a summons by the voluntary liquidator, *held*, that at this distance of time, and considering that the estimate was a reasonable one and that no improper motive was suggested, the directors were entitled to the sum claimed.—*E. p. Kemp; in re Peruvian Guano Co.*, L.R. [1894] 3 Ch. 690; 63 L.J. Ch. 818; 71 L.T. 611; 43 W.R. 170.
- (vi.) **Ch. D.—Officer of Building Society—Solicitor.**—W., a solicitor, was appointed solicitor of the Liberator Building Society at an annual salary, out of which he was to pay all office expenses, and he undertook to pay to the society all fees received by him from the society's

clients. *Held*, that under these circumstances, W. was an officer of the society, and that his estate was liable to contribute all sums that he had received as an officer.—*In re Liberator Building Society*, 71 L.T. 406.

- (i.) **C. A.—Mortgage—Debenture—Land Registry—Deposit of Security.**—Decision of Ch. D. (see Vol. 20, p. 5, v.) reversed.—*Somerset v. Land Securities Co.*, L.R. [1894] 3 Ch. 464; 63 L.J. Ch. 880; 71 L.T. 512; 43 W.R. 132.
- (ii.) **C. A. & Ch. D.—Reconstruction—Creditor—Contingent Liability—Joint-Stock Companies Arrangement Act, 1870, s. 2.**—A lessee of collieries assigned his leases to a company, which covenanted to indemnify him against all claims. The company was wound up, and a scheme was sanctioned whereby a new company was to be formed to take over the assets, undertake the liabilities, and pay the unsecured creditors. The lessee sought to prove against the old company for the total estimated amount of his possible liabilities. *Held*, that he was bound by the scheme, that if a creditor at all, he was not an unsecured creditor, and that his proof could not be admitted.—*In re Midland Coal, Coke and Iron Co.*; *Craig's Case*, 63 L.J. Ch. 859; 71 L.T. 329 and 705.
- (iii.) **Ch. D.—Shares—Company Limited by Guarantee—Companies Act, 1862, ss. 7, 14.**—The articles of a company limited by guarantee may provide for the division of the interests of the members in the company's undertaking into transmissible shares.—*Malleson v. General Mineral Patents Syndicate*, L.R. [1894] 3 Ch. 538; 63 L.J. Ch. 808; 71 L.T. 476; 43 W.R. 41.
- (iv.) **Ch. D.—Shares—Contract to take by Infant—Repudiation—Effect of.**—An infant applied for shares, which were allotted; she attended no meetings and received no dividends, and the liquidator in the voluntary winding-up took her name off the register. *Held*, that there had been a total failure of consideration, and that she was entitled to prove for the money paid on application and allotment.—*Hamilton v. Vaughan-Therrin Electrical Engineering Co.*, L.R. [1894] 3 Ch. 589; 63 L.J. Ch. 794; 71 L.T. 325; 43 W.R. 126.
- (v.) **C. A.—Shares—Issued at a Discount—Winding-up—Adjustment between Contributors.**—A company issued shares at a discount under a power contained in the articles. It was wound up, and all the creditors and costs were paid before the whole of the capital was called up. *Held*, that the issue of shares at a discount was void; and therefore that the discount shares must be called up in full in order to adjust the rights of the shareholders *inter se*.—*In re Railway Time Tables Publishing Co.*, 71 L.T. 652; 43 W.R. 117.
- (vi.) **Ch. D.—Shareholders—Personal Representative of—Calls on Shares.**—The widow and residuary legatee of T., a shareholder in the plaintiff company, possessed herself of the personal estate of the testator, but did not take a transfer of certain shares held by him in the plaintiff company. Notice was given of a call on the shares. She executed deeds assigning all the personal estate, except the shares, to L., in consideration of his covenant to indemnify her against liabilities, and to provide her with necessaries and comforts. *Held*, that the widow was bound to administer the estate according to law, and that as residuary legatee she only took what was left after the administration, that she ought to have provided for the calls on the shares, that the plaintiffs were entitled to be paid the calls and interest, and that the deeds of assignment were void as against them.—*Rent and General Collecting and Estate Co. v. Troughton*, 71 L.T. 427.

- (i.) **Ch. D.**—*Winding-up—Supervision Order—Petitioner's Debt.*—A debt incurred by a company under an agreement entered into after it has gone into voluntary liquidation is no ground for a petition for a supervision order, although the agreement and the liquidation formed part of the same scheme.—*In re Bank of South Australia*, L.R. [1893] 3 Ch. 722; 64 L.J. Ch. 44.
- (ii.) **C. A.**—*Winding-up—Report of Official Receiver—Fraud.*—Decision of Ch. D. (see Vol. 19, p. 121, i.) affirmed.—*In re General Phosphate Corporation*; in *re Northern Transvaal Gold Mining Co.*; in *re Delhi Steamship Co.*, L.R. [1895] 1 Ch. 3; 71 L.T. 619; 43 W.R. 34.
- (iii.) **Ch. D.**—*Winding-up—Rates—Occupation.*—The liquidator must pay in full the rates falling due in respect of the company's premises after the winding-up, where such premises are retained by him with a view either of obtaining a better price, or of avoiding a loss. In default of payment, liberty to restrain ought to be granted.—*In re Blazer Fire Lighter*, 71 L.T. 665.
- (iv.) **Ch. D.**—*Winding-up—Scheme—Official Receiver—Reservation of Right against Directors—Sanction of Court.*—When a scheme sanctioned by the Court reserves to the official receiver his right to proceed against the directors of the old company for misfeasance, the Court will not sanction such proceedings if it is satisfied that the directors of the new company have *bonâ fide* decided that such proceedings will be detrimental to their company. The Court, and not the Board of Trade, has the determination of the question.—*In re New Zealand Loan and Mercantile Agency Company*, 71 L.T. 693.
See Contract, p. 39, i.

Compulsory Purchase:—

- (v.) **Ch. D.**—*Application of Purchase Money—Vicarage—Repairs.*—Money paid for land purchased by the Commissioners of Sewers was to be invested in land to be settled to the like uses as the land taken. The Commissioners took part of a churchyard. *Held*, that in sanctioning the investment of part of the purchase money in a house which could be adapted for the purpose of a vicarage, the Court may also sanction the application of part of the money towards the necessary repairs and alterations.—*E. p. Commissioners of Sewers and Vicar of St. Botolph*, L.R. [1894] 3 Ch. 544; 63 L.J. Ch. 862.

Contempt of Court:—

- (vi.) **Ch. D.**—*Proceedings in Camera—Publication.*—An injunction was granted to restrain H. from communicating with a female ward of Court, and further proceedings took place in *camera*. It then appeared that he and the ward were already married. The hearing was adjourned. The S. newspaper published an account of the matter, giving names, and stating that the hearing was private. The information was furnished by P., a friend of H., who had been informed by H. of the facts. The M. newspaper gave a similar account, not stating that the hearing was private. It was copied into two other newspapers. Motion was made to commit H., P., and the publishers of the four newspapers. The publisher of the M. swore that he did not know that the hearing was private. *Held*, that the publication in the S. was a contempt, but not serious, and the Court was satisfied that it was not intentional. *Held*, that H. and the publisher of the S. must pay the costs of the motion; but that it must be dismissed with costs as against P. and the other publishers as an abuse of the process of Court.—*In re Martindale*, L.R. [1894] 3 Ch. 193; 71 L.T. 968; 64 L.J. Ch. 9; 43 W.R. 53.

Contract:—

- (i.) **C. A. & Ch. D.**—*Alternative Stipulations—Default in One—Right of Covenantee—Company—Equality of Shares.*—Under an ordinary memorandum of association, under which the capital of a company is to be divided into shares of equal amount, the interests of the shareholders must be equal in all respects. *Quere*, whether such a company can issue preference shares. A. assigned the lease of a mine to X., and X. covenanted that he would either pay A. £1,000, or transfer to him £1,000 worth of fully paid-up shares in a company to be formed by him for working the mine, the capital of which was not to exceed £12,000. X. formed a company with its capital divided into preference and ordinary shares. *Held*, that none of these shares would satisfy X.'s covenant, and that as he had put it out of his power to perform the covenant as to transferring shares, he must pay £1,000. *Held*, by C. A., that as the shares had no market value, the contract could not be satisfied by the transfer of shares.—*McIlquham v. Taylor*, L.R. [1895] Ch. 53; 63 L.J. Ch. 758; 71 L.T. 484 and 679.
- (ii.) **Ch. D.**—*Breach—Employment.*—The defendants engaged to employ the plaintiff as musical director for a fixed term, at a stated salary, with a provision that his name should be announced in certain newspapers, and on bills and programmes. An opera was produced at the theatre during the term, which the composer conducted, thereby doing the most important part of the work of the musical conductor. The plaintiff's salary was paid, and his name published as agreed. *Held*, that the contract meant that he should be really employed, and that he was entitled to more than nominal damages, although it had not been shewn that his non-employment would prevent him from getting another engagement.—*Bunning v. Lyric Theatre*, 71 L.T. 396.

Copyright:—

- (iii.) **Ch. D.**—*Sporting Papers—"Selection" of Horses.*—C. was the registered proprietor of a weekly sporting paper, in which were published every Monday the names of the horses selected as probable winners for the races to take place during the week. P., the proprietor of another sporting paper, quoted C.'s "selections," giving C.'s name. *Held*, that P. had merely published the fact that C. thought that particular horses would win, and that there was no infringement of copyright.—*Chilton v. Progress Printing and Publishing Company*, 71 L.T. 664; 43 W.R. 136.

Costs:—

- (iv.) **Ch. D.**—*Taxation—Copy Correspondence—Discretion—Trustees' Costs—Statute-Barred Costs.*—The amount to be allowed for copy correspondence is in the taxing master's discretion, but his answer must shew that he has ascertained what part of the correspondence was necessary for the due consideration of the case. In taxing the costs, charges and expenses properly incurred by trustees, statute-barred costs ought not to be disallowed, as trustees cannot be compelled to plead the statute.—*Budgett v. Budgett*, 71 L.T. 632; 43 W.R. 167.
- (v.) **Ch. D.**—*Taxation—Discretion—R.S.C.*, 1883, lxv., r. 27, sub-r. 89.—The Court has no jurisdiction to review the allowance of a witness's costs under the rule above-mentioned, if on proper consideration they have been allowed by the taxing master.—*Oliver v. Robins*, 71 L.T. 636.

County Court:—

- (i.) **C. A.**—*Costs—Contract or Tort—County Courts Act, 1888, s. 116.*—An action which can be maintained for misfeasance, contract or no contract, is “founded on tort,” and a verdict for £20 will therefore carry costs on the High Court scale.—*Taylor v. M.S. & L.R.*, L.R. [1895] 1 Q.B. 134; 64 L.J. Q.B. 6; 71 L.T. 596; 43 W.R. 120.
- (ii.) **Q. B. D.**—*Jurisdiction—Balance—Admitted Set-off—R.S.C., 1883, O. lv., r. 12—County Courts Act, 1888, s. 57.*—A special indorsement on a writ stated the total claim as £148, and gave credit for payments on account £25, reducing the claim to £123. The plaintiff recovered only £50. *Held*, that the set-off was an admitted set-off, that the county court had jurisdiction, and that county court costs only should be allowed.—*Lovejoy v. Cole*, L.R. [1894] 2 Q.B. 861; 71 L.T. 374; 43 W.R. 48.

Criminal Law:—

- (iii.) **Q. B. D.**—*Form of Indictment—Receiving Goods—False Pretences.*—In an indictment for receiving goods knowing them to have been obtained by false pretences, it is not necessary to set out the false pretences.—*Reg. v. Taylor*, L.R. [1895] 1 Q.B. 25; 71 L.T. 571; 64 L.J. M.C. 11; 43 W.R. 24.
- (iv.) **Q. B. D.**—*Summary Jurisdiction—First Offence—Right to Jury—Summary Jurisdiction Act, 1879, s. 17.*—The appellant was convicted by the justices of keeping a brothel. Before sentence a previous conviction was reported. For a second offence she was liable to four months imprisonment. The justices, however, sentenced her to two months, in default of paying a fine of £20. *Held*, that the justices had in effect treated the charge as for a first offence, that the appellant had not been charged with an offence for which more than three months imprisonment could be imposed, and was not entitled to claim a trial by jury.—*Reg. v. Fowler*, 64 L.J. M.C. 9.

Ecclesiastical Law:—

- (v.) **Ch. D.**—*Advowson—Right of Presentation—Turns—Exchange—Usurpation.*—As between patrons with alternate turns of presentation, a presentation on an exchange of livings counts as a turn; and if one patron usurps the turn of the other, the order of turns is not altered, but the ousted patron (after six months) loses his turn; and on this point there is no distinction between usurpation by a total stranger, and usurpation by a person privy in, or party to, the title.—*Keen v. Denny*, L.R. [1894] 3 Ch. 169; 64 L.J. Ch. 55; 71 L.T. 566; 43 W.R. 89.
- (vi.) **Consistory Court of London.**—*Burial—Cremated Remains—Church closed for Interment.*—A faculty was refused for the insertion in a niche in the wall of a church closed for burial of an urn containing the ashes of a cremated body, in consequence of the inconvenience which might be caused in case of alterations in the church. *Held*, that the interment of the urn beneath the floor of the church might be allowed, a burial fee being paid to the incumbent. *Semble*, that cremated remains cannot be lawfully interred in or under a parish church without a faculty.—*In re Kerr*, L.R. [1894] P. 284.
- (vii.) **Consistory Court of London.**—*Second Communion Table—Side Chapel.*—The Court, before granting a faculty for placing a second communion table in a side chapel of a church, requires to be satisfied that such chapel is so separated from the body of the church as to indicate that it is intended for use when the chancel or nave is not used for service.—*St. Peter's Vicar v. Parishioners*, L.R. [1894] P. 850.

Estoppel :—

- (i.) **C. A. & Ch. D.**—*Judgment—Consent.*—Judgment by consent of parties creates an estoppel just as much as a judgment arrived at by the Court after a case has been fought out.—*E. p. Bank of England; in re South American and Mexican Co.*, L.R. [1895] 1 Ch. 37; 63 L.J. Ch. 803; 71 L.T. 334 and 594; 43 W.R. 107 and 131.

Friendly Society :—

- (ii.) **Q. B. D.**—*Withholding or Misapplying Property—Friendly Societies Act, 1875, s. 16, sub-s. 9.*—The steward of a club, registered as a friendly society, was entrusted with the club stock of liquors, tobacco, &c. A large deficiency was found on taking stock. *Held*, that the facts showed a *prima facie* case of withholding or misapplying the property of the society, and that the magistrate ought to issue a summons.—*Reg. v. Bennett*, 63 L.J. M.C. 181.

Gaming :—

- (iii.) **C. C. R.**—*Betting House Act, 1853, s. 1—Resorting to House—Jury—Election of Accused—Summary Jurisdiction Act, 1879, s. 17.*—On trial of an indictment for keeping open a house for the purpose of betting with persons resorting thereto, it is not necessary to prove actual resorting to the house, the purpose being the offence, and it is enough to prove that the house was opened and advertised as a betting house. But where no evidence except that of resorting is offered, actual resorting must be proved, and the receipt of letters and telegrams directing the accused to make bets is not enough. When an accused person elects to be tried by a jury, the procedure is the same as in the case of indictable offences. He may therefore be committed in respect of any indictable offence disclosed by the depositions, and counts may be added in respect of any indictable offence so disclosed, except in cases falling within the Vexatious Indictments Act.—*Reg. v. Brown*, L.R. [1895] 1 Q.B. 119; 64 L.J. M.C. 11.

Habeas Corpus :—

- (iv.) **Q. B. D.**—*Service—Disobedience—Attachment.*—A writ of *habeas corpus* can only be properly served by delivering the original writ to the person served. If a copy is served the person served cannot waive the irregularity by appearing so as to be liable to attachment for disobedience. If the original is not delivered to the principal of several persons served, the service of a copy upon the others is not good service.—*Reg. v. Rowe*, 71 L.T. 578.

Highway :—

- (v.) **Q. B. D.**—*Bridge—Canal Company—Obligation to Repair—Approaches.*—The Act which incorporated a canal company, now represented by the defendants, provided that it should make and keep in repair certain bridges. One of these carried a road over the canal, and raised approaches had to be constructed. *Held*, that the approaches were practically part of the bridge, and that the defendants were bound to keep them in repair.—*Nottingham County Council v. M.S. & L.R.*, 71 L.T. 430.
- (vi.) **Q. B. D.**—*Surveyor—Liability of—Debt due from Predecessor—Highway Act, 1835.*—No action lies against a surveyor of highways, appointed under the Act, for the price of materials supplied to his predecessor for the repair of highways, where such predecessor has died insolvent after having received from the parish moneys sufficient to pay for such materials.—*Frodingham Iron and Steel Co. v. Bowser*, L.R. [1894] 2 Q.B. 791; 71 L.T. 433; 64 L.J. Q.B. 12.

Husband and Wife:—

- (i.) **P. D.**—*Divorce—Variation of Settlement.*—Where there were five beneficiaries who might on a remote contingency become entitled to a share in the funds settled, four of whom had consented to the *corpus* being returned to the petitioner, and the fifth of whom was in the interior of Africa and could not be communicated with, the Court ordered that the interests of all five should be extinguished. As one of the trustees had left the country and could not be found, the costs of the two others were allowed as if he had joined with them.—*Storer v. Storer*, 71 L.T. 704.
- (ii.) **P. D.**—*Judicial Separation—Dismissal of Petition—Costs.*—In a suit by the wife for judicial separation on the ground of cruelty, it appeared that many affectionate letters had been exchanged between the parties after the alleged acts of cruelty. The petition was dismissed, and the "usual order" for the wife's costs was refused.—*Hough v. Hough*, 71 L.T. 703.
- (iii.) **P. D.**—*Paraphernalia—Married Women's Property Act, 1882, ss. 1, 2, 17.*—A husband made his wife valuable presents of jewellery. Most of them were made on Christmas days, or on her birthdays, or as "peace offerings" after disputes, and with the knowledge of the husband the wife took entire possession of the jewellery. After taking divorce proceedings the husband, for the first time, alleged that he only allowed her the use of the jewels. *Held*, that they were not paraphernalia, but the absolute property of the wife.—*Tasker v. Tasker*, L.R. [1895] P. 1.
- (iv.) **P. D.**—*Restitution of Conjugal Rights.*—Delay is no bar to a suit for this purpose.—*Beauchlerk v. Beauchlerk*, 71 L.T. 376.
- (v.) **Q. B. D.**—*Separation—Annoyance by Wife—Adultery.*—By a separation deed, without a trustee, the husband covenanted to pay an annuity, and the wife covenanted not to molest, annoy, or interfere with him. She committed adultery, and a child was born. *Held*, that this was no defence to an action for arrears of the annuity.—*Sweet v. Sweet*, L.R. [1895] 1 Q.B. 12; 71 L.T. 672.

Inclosure:—

- (vi.) **Ch. D.**—*Construction of Act—Separate Ownership of Surface and Minerals—Compensation Clause.*—In the construction of Inclosure Acts, where the ownership of the surface and the minerals is severed, regard must be had to the following rules: (1) *Primâ facie* the surface owner has the ordinary right to support; (2) he can only be deprived of such right by unequivocal words, or by implication from the context. The absence or inadequacy of any provision for compensation tends strongly against such implication.—*Bell v. Earl of Dudley*; *Consett Waterworks Co. v. Ritson*, 43 W.R. 122.

Infant.—*See Bankruptcy*, p. 33, vii.

Injunction:—

- (vii.) **Ch. D.**—*Contract of Service—Clause Affirmative in Substance.*—A contract of service provided that the employer should not give the employed notice to leave, except in the case of misconduct or breach of the agreement. *Held*, that the clause, though negative in form, was affirmative in substance, and that an injunction ought not to be granted to enforce it.—*Davis v. Foreman*, L.R. [1894] 3 Ch. 654; 43 W.R. 168.
- (viii.) **C. A.**—*Slander of Goods of Rival Trader.*—The defendant, a retailer, was supplied by the plaintiff with his infants' food for sale. The defendant fixed to each bottle of the food a notice commending a rival food as the best made. The Court below was of opinion that this

was a mere puff of the rival food, and gave the plaintiff no ground of complaint. *Held*, however, that if on the whole of the evidence it appeared that the statement in the defendant's notice was a false statement about the plaintiff's goods, and had injured or was likely to injure the plaintiff, the action would lie. New trial ordered.—*Mellin v. White*, L.R. [1894] 3 Ch. 276.

International Law :—

- (i.) **P. C.**—*Jurisdiction of Foreign Court—Decree Against Absent Foreigner.*—No territorial legislation can give jurisdiction which ought to be recognised by a foreign court against absent foreigners who owe no allegiance or obedience to the legislating power. In all personal actions the courts of the country in which the defendant resides, not those of the country where the cause of action arose, should be resorted to.—*Sirdar Girdyal Singh v. Rajah of Faridkote*, L.R. [1894] A.C. 670.

Joint Contractor :—

- (ii.) **C. A.**—*Judgment on Cheque—Bar.*—Decision of Q. B. D. (*see* Vol. 19, p. 126) affirmed.—*Wegg-Prosser v. Evans*, L.R. [1895] 1 Q.B. 108; 64 L.J. Q.B. 1; 43 W.R. 66.

Judge :—

- (iii.) **C. A.**—*Action Against.*—No action will lie against a judge in respect of any acts done by him in his judicial capacity, even if they are done maliciously.—*Anderson v. Gorrie*, 71 L.T. 382.

Justices :—

- (iv.) **Q. B. D.**—*Summary Jurisdiction—Cab Fare—Refusal to Pay—Civil Debt.*—A cab fare, recoverable under the Town Police Clauses Act, 1847, is a civil debt within the meaning of sect. 6 of the Summary Jurisdiction Act, 1879, and refusal to pay such a fare is not a criminal offence, whereby the person refusing is liable to conviction and a term of imprisonment. The words, "and not on information," in such section are only intended to exclude cases where an information on oath is required by statute.—*Reg. v. Justices of Torquay*, L.R. [1895] 1 Q.B. 11; 71 L.T. 574; 43 W.R. 59.

Landlord and Tenant :—

- (v.) **Q. B. D.**—*Compensation for Improvements—Breach of Covenant—Summary Proceedings—Agricultural Holdings Act, 1883, ss. 6, 24.*—Where a tenant has made a claim for improvements, and the landlord has counter-claimed for breach of covenant, and the arbitrator has awarded that a balance is due to the landlord, the landlord cannot use the summary procedure of the Act to recover the balance.—*Holmes v. Formaby*, 43 W.R. 205.
- (vi.) **Q. B. D.**—*Notice of Determination of Lease.*—A tenant, having power to determine his lease, wrote to his landlord that he considered the rent too high, and that he should not be able to stop unless some reduction was made, and said, "I give you an early intimation of this so that you may have ample time to consider what course you would like to adopt." *Held*, that this was a sufficient notice to determine the lease.—*Bury v. Thompson*, 43 W.R. 203.

Licensing :—

- (vii.) **H. L.**—*Transfer—Misconduct—Expiration.*—Decision of C. A. (*see* Vol. 19, p. 120, ii.) affirmed.—*Freer v. Murray*, L.R. [1894] A.C. 576; 63 L.J. M.C. 242; 71 L.T. 444.

Limitations:—

- (i.) **Ch. D. Mortgage—Proviso for Redemption—Arrears of Interest—Reversion.**—A mortgage of a reversionary share of the proceeds of realty and personalty in Court contained a proviso for redemption upon payment, on or before the death of the tenant for life, of the principal sum, with "interest for the same in the meantime" at a specified rate. There were distinct covenants for payment of the principal on the death of the tenant for life, and of interest in the meantime; but the proviso did not refer to these covenants. When the tenant for life died thirteen years' interest was unpaid. *Held*, that the proviso for redemption was a distinct contract, and that the mortgagee's right to the whole of the interest was not affected by any statute of limitations or rule of equity.—*Turner v. Spencer*, 43 W.R. 153.

Local Government:—

- (ii.) **Q. B. D. —Borough—Clerk to Justices—County Fund—Fees—Local Government Act, 1888, s. 84.**—The county council must pay the salary of the clerk to the justices of a borough in the county, which has a population of under 10,000, and a separate commission of the peace; and all fees and costs payable to such clerk, and not excluded in fixing his salary, are to be paid to the county fund.—*Herefordshire County Council v. Town Council of Leominster*, L.R. [1895] 1 Q.B. 43; 71 L.T. 576.
- (iii.) **Q. B. D.—Building Line—"Building on either Side in same Street"—Public Health Act, 1888, s. 3.**—A house was built by J. at the side of a road where there were no other houses. He afterwards proposed to build cottages on the same side of the road, thirty yards from such house. *Held*, that the local authority could not prescribe a building line by reference to the wall of the house.—*Reg. v. Ormesby Board of Health*, 43 W.R. 96.
- (iv.) **Q. B. D.—Drainage—Sewer—Duty of Local Authority—Public Health Act, 1875, s. 15.**—There was a drain which carried off surface water and sink water from the defendant's house amongst others. He and other owners of houses, without the knowledge of the local authority, connected water closets with the drain. This caused a nuisance, and the local authority preferred a complaint against the defendant, but did not prove that he alone caused the nuisance. *Held*, that the authority were in default in not providing proper drainage for the district, and could not transfer the obligation to do so to the individual inhabitants.—*The Wycombe Union v. Parsons*, 71 L.T. 428.
- (v.) **Q. B. D.—Licence for Music and Dancing—County Council—Bias—Validity of Proceedings.**—It appeared that P., a county councillor, had, previously to an appeal to the county council against a decision of the council's licensing committee, which was adverse to a licence, attended a meeting of persons who opposed the licence. He was alleged to have joined in discussing the evidence to be adduced, but stated that he had taken no part in the discussion except telling the meeting the course of procedure to be adopted. It did not appear that P. affected the decision of the council otherwise than by his vote. *Held*, that he was not so far biased as to invalidate the proceedings of the council.—*Reg. v. London County Council*, 71 L.T. 638.
- (vi.) **Q. B. D.—Nuisance—Abatement—"Owner"—Public Health (London) Act, 1891, s. 141.**—Where the lessee of premises, not held at a rack-rent, has sub-let them for the remainder of the term, less a few days, the rent and covenants being the same as in the original lease, the sub-

lessee, and not the lessee is the "owner" within the meaning of the section above-mentioned.—*Truman, Hanbury, Buxton & Co. v. Kerslake*, L.R. [1894] 2 Q.B. 774; 63 L.J. M.C. 222; 43 W.R. 110.

- (i.) **Q. B. D.**—*Nuisance—Sewers—Duty of Local Authority to Provide—Liability of Owner of Property—Public Health Act, 1875, ss. 13, 15, 94, 95, 96.*—X. and others, without the knowledge of the sanitary authority, more than twenty years ago connected their water-closets with a drain belonging to such authority, being the only available drain. A nuisance was caused thereby, and the authority took proceedings against X. to obtain an abatement. It was not proved that his sewage alone caused the nuisance. The authority had not carried out any system of sewerage in their district. *Held*, that as the authority were under the obligation to provide the sewers necessary for their district, they could not evade their obligation by proceeding against X., and that the justices were right in dismissing the complaint.—*Fordom v. Parsons*, L.R. [1894] 2 Q.B. 780.
- (ii.) **Q. B. D.**—*Urban Authority—County Council—Main Roads—Arbitration as to Payment—Local Government Act, 1888, ss. 11, 35.*—Where an urban authority has claimed to retain the powers and duties of maintaining the main roads within its district, the amount to be paid to such authority by the county council in respect of such roads can only be settled, in default of agreement, by the arbitration of the Local Government Board.—*In re Bedfordshire County Council and Bedford Urban Sanitary Authority*, L.R. [1894] 2 Q.B. 786; 64 L.J. Q.B. 26; 71 L.T. 433.
- (iii.) **Ch. D.**—*Waterworks—Restriction on Construction—Public Health Act, 1875, ss. 4, 51, 52.*—Where a local authority has, previously to the incorporation of a water company in its district, substantial waterworks already in existence, it is not bound to give notice to the company before commencing additions to such works.—*Cleveland Water Co. v. Redcar Local Board*, 64 L.J. Ch. 64; 43 W.R. 90.

See Married Woman, p. 46, i.

Lunatic:—

- (iv.) **C. A.**—*Affidavit—Inspection—Annexed Documents—Discharge of Committee—Deceased Lunatic.*—When an affidavit is filed which refers to documents as "annexed" thereto, any person entitled to see the affidavit is entitled to see the documents, though they are not actually annexed. The executor of a deceased lunatic asked that the committee should be ordered to deliver up certain documents relating to the lunatic's estate. The committee had not received a final discharge. *Held*, that the application was premature.—*In re Hincliffe*, 64 L.J. Ch. 76; 71 L.T. 532; 43 W.R. 82.
- (v.) **C. A.**—*Practice—Stockholder—Dividends—Receiver—Lunacy Act, 1870, ss. 108, 116, 146, 333.*—The judge or a master in lunacy may appoint a receiver of dividends on stock standing in the Bank of England in the name of a person who is "through mental infirmity arising from disease or age, incapable of managing his affairs." But in the absence of special reason to the contrary, it is better to bring the stock into Court.—*In re Browne*, L.R. [1894] 3 Ch. 412; 63 L.J. Ch. 729; 71 L.T. 365; 43 W.R. 175.

Married Woman:—

- (vi.) **C. A.**—*Separate Estate—Restraint on Anticipation—Sequestration—Married Women's Property Acts, 1882, s. 1; 1893, ss. 1, 2.*—An order had been made for payment of costs by a married woman, tenant for life of real estate for her separate use without power of anticipation.

Held, that under a sequestration to enforce payment, rents due after the order for payment, but before the issue of the writ of sequestration, could not be taken. The 2nd section of the Act of 1893 does not apply to an order for payment of costs made before the Act came into operation.—*E. p. Hood-Barrs*; *in re Lumley*, L.R. [1894] 3 Ch. 135.

- (i.) **Q. B. D.**—*Rates—Recovery of—Compounding—Poor Rate Assessment Act, 1869, ss. 3, 4—Summary Jurisdiction Acts, 1879, 1884—Interpretation Act, 1889—Married Women's Property Act, 1882, s. 1.*—A married woman, owner of houses in the metropolis, gave notice of her wish to compound for the rates. She was allowed the consequent deductions from the rates, but made default in payment of general rates, which are recoverable in the same manner as poor rates. *Held*, that she had made no such contract with the overseers as to bring the case within the Married Women's Property Act, 1882, and that she was liable to the ordinary remedy for the recovery of poor rates—namely, distress and imprisonment in default of sufficient distress.—*In re Allen*, L.R. [1894] 2 Q.B. 924; 63 L.J. M.C. 267; 43 W.R. 141.

Metropolis Management:—

- (ii.) **Q. B. D.**—*“Drain” —“Sewer” —Liability to Repair—Metropolis Management Act, 1855, s. 250.*—P. owned two blocks of buildings containing several sets of apartments, separated by a causeway twenty feet wide, which opened into a public street. Access to one block was from the causeway, and to the other from the street. There was a dust-bin in the causeway for the common use of the inhabitants of both blocks. The blocks were drained by branch drains running into a main drain. *Held*, that such drain was used for “premises within the same curtilage,” and was a “drain” and not a “sewer,” and that P. was liable to repair it.—*Pilbrow v. Vestry of St. Leonard, Shoreditch*, L.R. [1895] 1 Q.B. 33; 71 L.T. 697.
- (iii.) **C. A. & Q. B. D.**—*Drainage—Lowther Arcade—Drain—Sewer—Metropolis Management Act, 1854, ss. 68, 69, 250.*—The Lowther Arcade is drained by a pipe running down the centre of the Arcade. *Held*, that the pipe was not a “drain” but a “sewer”; that the Arcade was not “one building” or “premises within the same curtilage”; and that the local authority was liable for the repair of the sewer.—*Vestry of St. Martin-in-the-Fields v. Bird*, 71 L.T. 432; 43 W.R. 8 and 194.
- (iv.) **Q. B. D.**—*Duty to Clear Footways—Neglect of Public Health (London) Act, 1891, s. 29.*—A person injured owing to the neglect of a sanitary authority to clear frozen snow from a footway, has no right of action against them.—*Saunders v. Holborn Board of Works*, L.R. [1895] 1 Q.B. 64; 71 L.T. 519; 43 W.R. 26.
- (v.) **Q. B. D.**—*Footway—Flagging—Land Extra commercium—Owner—Metropolis Management Acts, 1855, s. 250; 1890, s. 1*—A local authority had, under the Metropolis Open Spaces Act, 1877, acquired the lease of a piece of land for a public garden. *Held*, that they were owners, and liable to contribute towards the expenses of flagging the adjoining footways.—*Vestry of St. Mary's, Islington v. Cobbett*, 71 L.T. 573; 43 W.R. 47.
- (vi.) **Q. B. D.**—*Height of Building—Continuing Offence—Metropolis Management Act, 1862, ss. 85, 107.*—The respondent employed builders to erect a house which was higher than allowed by the Act. In October, 1892, the county council served a notice on the builders requiring them to comply with the Act, and the notice came to the knowledge of the respondent. In February, 1893, the builders gave the respondent possession. In December, 1893, the county council gave notice to the respondent to comply with the Act. In March, 1894, they

summoned him for continuing the building on December 31st, 1893, and on each succeeding day to the date of the summons. *Held*, that he ought to be convicted, as the Act made the continuing of the building an offence, so that neither the fact that no conviction had been obtained for the erection, nor the lapse of six months after its erection or its discovery by the council without such conviction being obtained, prevented the recovery of penalties for continuing the building.—*London County Council v. Worley*, L.R. [1894] 2 Q.B. 826; 63 L.J. M.C. 218; 71 L.T. 487; 43 W.R. 11.

- (i.) **Q. B. D.**—"Owner"—"Occupier"—Liability for Paving—*Metropolis Management Act*, 1855, ss. 105, 250.—A lessee who has sub-let at the same rent as he pays, and derives no profit from the rent, though he receives it from the occupier, is not liable to contribute as "owner" to the expenses of paving.—*Walford v. Hackney Board of Works*, 43 W.R. 110.
- (ii.) **Q. B. D.**—*Vestryman*—Qualification—Loss of.—A vestryman who is properly qualified at the time of his election does not cease to be a member of the vestry before the expiration of his term of office because he had ceased to occupy a house in the parish.—*Reg. v. Williams*, 43 W.R. 140.

Mine:—

- (iii.) **Q. B. D.**—*Examinations of Mines—Reports*.—The examination required by the Coal Mines Regulation Act, 1887, s. 49, r. 5, to be made every day must be reported and recorded, as well as that directed to be made every week.—*Scott v. Bould*, L.R. [1895] 1 Q.B. 9; 64 L.J. M.C. 16; 71 L.T. 577.

Mortgage:—

- (iv.) **Q. B. D.**—*Attornment—Death of Mortgagor—Occupation by Heir-at-Law—Right to Distrain*.—A mortgage deed contained a clause of attornment. The mortgagor died, and his heir-at-law succeeded to the mortgaged premises, and continued to pay the interest. *Held*, that there was no relation of landlord and tenant between the mortgagee and the heir-at-law, and that the former would not distrain for arrears of interest.—*Scobie v. Collins*, 64 L.J. Q.B. 10.
- (v.) **C. A.**—*Consolidation*.—Decision of Ch. D. (see Vol. 19, p. 130, i.) affirmed.—*Pledge v. Carr*, L.R. [1895] 1 Ch. 51; 64 L.J. Ch. 51; 71 L.T. 598; 43 W.R. 50.
- (vi.) **H. L.**—*Purchase of Equity of Redemption—Merger—Intention*.—A solicitor acted for all parties in mortgage transactions. A mortgage was executed in favour of A., and a second mortgage to the appellant. The solicitor undertook in each case either to take a transfer of the securities, or to make good any deficiency on realisation. The mortgagor became bankrupt, and the solicitor purchased the equity of redemption. The solicitor paid off A. with a loan obtained from his banker, and took a transfer of A.'s mortgage, which he deposited with the banker. Afterwards the respondent made the solicitor an advance and took a transfer of the mortgage. *Held*, that there was no merger of A.'s mortgage with the equity of redemption, and that it retained its priority over the appellant's mortgage.—*Thorne v. Cann*, 64 L.J. Ch. 1. See Limitations, p. 44, i.

Nuisance:—

- (vii.) **H. L.**—*Adjoining Owners—Overhanging Tree—Right to Cut*.—Decision of C. A. (see Vol. 19, p. 132, iii.) affirmed.—*Lemmon v. Webb*, 71 L.T. 647.

D

- (i.) **Ch. D.**—*Injunction—Noise caused by Two or More Persons.*—The acts of two or more persons may, taken together, constitute such a nuisance that an injunction will be granted against all, although the annoyance caused by the act of any one of them taken alone would not amount to a nuisance.—*Lambton v. Mellish*; *Lambton v. Cox*, L.R. [1894] 3 Ch. 163; 63 L.J. Ch. 929; 71 L.T. 885; 43 W.R. 5.

Partnership :—

- (ii.) **Ch. D.**—*Dissolution—Parties—Rights of Persons Nominated to succeed to Shares.*—Partnership articles between five persons provided that each might nominate a son to succeed to his share, but that no son so nominated should succeed till he attained twenty-one. The power was exercised. An action was commenced for dissolution, and the defendant applied to stay all proceedings until the nominated sons (who were all under twenty-one) were made parties. *Held*, that the sons were not necessary parties, and that the clause in question did not prevent the partners from dissolving the partnership.—*Ehrmann v. Ehrmann*, 43 W.R. 125.
- (iii.) **H. L.**—*Retiring Partner—Liability of—Overdraft—Principal and Surety—Release.*—Decision of C. A. (see Vol. 19, p. 94, v.) affirmed.—*Rouse v. Bradford Banking Co.*, L.R. [1894] A.C. 586; 64 L.J. Ch. 890; 71 L.T. 522; 43 W.R. 79.

Patent :—

- (iv.) **C. A.**—*Exclusive Licence—Power to Revoke—Breach of Covenants—Derivation—Rectification.*—Decision of Ch. D. (see Vol. 20, p. 26, iv.) affirmed.—*Guyot v. Thomson*, L.R. [1894] 3 Ch. 388; 64 L.J. Ch. 32; 71 L.T. 416.
- (v.) **P. C.**—*Prolongation—Expiration of Foreign Patents—Patents, &c., Act, 1883, s. 25, sub-s. 4.*—A foreign invention first patented in England after the passing of the Act may be dealt with under the section above-mentioned on the footing that the Patent Law Amendment Act, 1852, has been repealed with respect to it. The lapse or expiration of foreign patents are circumstances to be considered with reference to the question of extending a British patent, but are not conclusive against such extension.—*In re Semet and Solvay's Patent*, 71 L.T. 674.

Poor Law :—

- (vi.) **Q. B. D.**—*Outdoor Relief—Re-imbusement of Guardians—Ordinary Creditors—Poor Law Act, 1849, ss. 16, 17.*—A pauper received outdoor relief. At her death she left a will dealing with certain property, and appointing a creditor as executor. *Held*, that the guardians were not preferential creditors with respect to their claim for re-imbusement, and were not entitled to "take and appropriate" the property of the deceased.—*Laver v. Bootham*, L.R. [1895] 1 Q.B. 59; 71 L.T. 570; 43 W.R. 25.
- (vii.) **H. L.**—*Rating—Docks—Different Parishes—Hypothetical Tenant.*—Decision of C. A. (see Vol. 19, p. 133, ii.) affirmed.—*Hull Docks Co. v. Sculcoates Guardians*, 71 L.T. 642.
- (viii.) **C. A.**—*Rating—Exclusive Occupation—Canal.*—Decision of Q. B. D. (see Vol. 19, p. 52, i.) affirmed.—*Doncaster Assessment Committee v. M.S. & L.R.*, 71 L.T. 585.
- (ix.) **H. L.**—*Rating—Valuation List—Valuation (Metropolis) Act, 1869, s. 32.*—An appeal against the "total of the gross value" or "the total of the rateable value" of a parish under the section above mentioned, cannot be preferred on the ground that the valuation of individual

hereditaments is incorrect.—*London County Council v. Assessment Committee of St. George's, Hanover Square*, L.R. [1894] A.C. 600; 64 L.J. Q.B. 48; 71 L.T. 409.

Power:—

- (i.) **Ch. D.—Special Power—General Bequest—Evidence of State of Property—Admissibility.**—A testatrix had a special power of appointment in favour of her children. She directed by will that "all my property of every kind" should be divided amongst them in certain shares, but made no reference to the power. *Held*, that the power was not exercised, and that evidence of the state of her property was not admissible to shew her intention.—*Bruno v. Eyston*, L.R. [1894] 3 Ch. 595; 43 W.R. 139.

Practice:—

- (ii.) **C. A.—Appeal—Time for—Interlocutory or Final Order**, R.S.C., 1883, O. lviii., r. 15.—*Rules of Court*, November, 1893.—An order in an administration action directing that certain payments might be made to an annuitant, and adjourning further consideration, though it finally settled the construction of the clause, *held*, to be interlocutory and not final, so that an appeal against it, not brought within fourteen days, was out of time.—*Long v. Gardner*, 71 L.T. 412.
- (iii.) **C. A.—Appeal—Leave—Judicature Acts**, 1873, s. 52; 1894, s. 1 (b).—The leave of the Court of Appeal or a judge thereof for appealing from an interlocutory order made by a judge need not be obtained for an application to vary or discharge an interim order made under the section first mentioned.—*Boyd v. Bischoffsheim*, L.R. [1895] 1 Ch. 1; 71 L.T. 531; 43 W.R. 36.
- (iv.) **C. A.—Compromise—Approval of—Absent Persons—R.S.C.**, 1883, O. xvi., r. 9a.—The Court may approve of a compromise between the parties to an action, and make it binding on absent persons who have not assented. But it cannot bind absent persons who have dissented, and if it sanction the compromise will only do so on terms of making provision for satisfying the claims of the dissentients.—*Collingham v. Sloper*, L.R. [1894] 3 Ch. 716; 71 L.T. 456.
- (v.) **Ch. D.—Contempt of Court—Notice of Motion—Service—R.S.C.**, 1883, O. xlv., r. 2; O. lxvii., r. 4.—Leave to issue a writ of attachment against a defendant who had not appeared, but had failed to obey an order to leave accounts at chambers, was refused, as the notice of motion had not been served on him personally, but had been filed.—*Bassett v. Bassett*, L.R. [1894] 3 Ch. 179; 63 L.J. Ch. 844.
- (vi.) **Ch. D.—Costs—Taxation—Immaterial Witness—Discretion of Taxing Master.**—The Court will not interfere with the discretion of the taxing master as to allowing or disallowing the expenses of a witness, unless satisfied that the master has not properly considered the matter.—*Oliver v. Robins*, 43 W.R. 137.
- (vii.) **C. A.—County Court—Action Remitted—Counter-claim—Unliquidated Damages—County Courts Act**, 1855, s. 65.—Decision of Q. B. D. (*see* Vol. 20, p. 18, v.) affirmed.—*Guilford v. Lambeth*, L.R. [1895] 1 Q.B. 92; 43 W.R. 97.
- (viii.) **Q. B. D.—Discovery—Documents Relating to Amount of Damages—R.S.C.**, 1883, O. xxxi., r. 4.—Where the question of the defendant's liability can be separated from that of the amount of damages, the Court will not order the production of documents which only relate to the amount of damages until the question of liability has been decided.—*Schreiber v. Heyman*, 63 L.J. Q.B. 749.

- (i.) **C. A.—Discovery—Interrogatories—Objections to—R.S.C., 1883, O. xxxi., rr. 1, 6.**—The allowance by the judge of interrogatories to be administered leaves the party free to take any objection to answering which he might otherwise have taken. A. and R. were defendants as executors of W., and R. was also a defendant in his own interest. A. was, by an order made in the administration of W.'s estate, appointed to defend on behalf of the estate. *Held*, that such appointment did not affect the plaintiff's right to interrogate R.—*Peek v. Ray*, L.R. [1894] 3 Ch. 282.
- (ii.) **C. A.—Equitable Execution—Receiver.**—Since the Judicature Acts the Court has jurisdiction to grant equitable execution by appointing a receiver of an equitable reversionary interest in personalty.—*Tyrell v. Painton*, 71 L.T. 687; 43 W.R. 163.
- (iii.) **C. A.—Evidence—Foreign Defendant—Temporarily within Jurisdiction—Commission.**—A domiciled foreigner was served with the writ of summons while on a temporary visit to England. He paid a second visit to England, but returned to his home. *Held*, that he was entitled to a commission to take his evidence abroad.—*New v. Burns*, 71 L.T. 681; 43 W.R. 182.
- (iv.) **C. A.—Evidence—Judgment Debtor—Examination as to Means—Expenses—Attachment—Service of Copy of Affidavit.**—A judgment debtor attending before a master for examination under O. xlii., r. 32, is only entitled to such sum for his expenses as the master may think reasonable. Where, on an application for a writ of attachment, the party shewing cause objected that he had not been served under O. lii., r. 4, with a copy of the affidavits to be used, and the Judge allowed an adjournment to enable him to answer them, and on the adjourned hearing ordered the writ to issue, the Court of Appeal refused to set it aside for non-compliance with O. lii., r. 4.—*Rendell v. Grundy*, L.R. [1895] 1 Q.B. 16; 71 L.T. 514; 43 W.R. 50.
- (v.) **Ch. D.—Evidence—Company—Winding-up—Misfeasance Proceedings—Deposition taken at Public Examination—Companies (Winding-up) Act, 1890, s. 8, sub-s. 7, s. 26—Rules, 1892, r. 27.**—The rule above mentioned is not invalid, as it does not lay down that the deposition referred to is to be treated as absolute evidence against persons other than the deponent, but only (in effect) as an affidavit upon which the deponent may be cross-examined.—*In re London & General Bank*, 68 L.J. Ch. 858.
- (vi.) **C. A.—Evidence—Documents—Evidence en bloc—Report of Referee—Motion to Vary.**—Decision of Ch. D. (*see* Vol. 20, p. 19, ii.) affirmed.—*In re The Maplin Sands*, 71 L.T. 594.
- (vii.) **Ch. D.—Motion to Discharge Order in Chambers.**—The power of a judge of the Chancery Division to hear a motion to discharge an order made in chambers is not affected by the Supreme Court of Judicature Act, 1894.—*Boake Roberts & Co. v. Stevenson and Howell*, 71 L.T. 722; 63 W.R. 189.
- (viii.) **C. A.—Order Passed and Entered—Jurisdiction to Re-hear.**—When an order has been perfected there is no jurisdiction to re-hear the matter and make a new order or alter the former one, although the order is wrong by reason of some misrepresentation or mistake of fact.—*Preston Banking Co. v. Allsup and Sons*, 71 L.T. 708.
- (ix.) **C. A.—Originating Summons—Payment into Court of Money in Hands of Trustees.—R.S.C., 1883, O. lv., r. 3 (d).**—The rule above mentioned is confined to money actually in the hands of the trustees, and does not extend to money formerly in their hands, but subsequently misapplied.—*Nutter v. Holland*, L.R. [1894] 3 Ch. 408; 63 L.J. Ch. 932; 71 L.T. 508; 43 W.R. 18.

- (i.) **Ch. D.—Parties—Striking Out—Pleading.**—A tenant in common brought an action for partition or sale, and joined as co-defendants the mortgagees of the entirety, and the mortgagee of his own undivided share. On action by the mortgagor, the action was dismissed as against the mortgagees of the entirety on the ground that there was no reasonable cause of action, and as against the mortgagees of the plaintiff's share on the ground that the mortgagee did not concur.—*Sinclair v. James*, L.R. [1894] 3 Ch. 534; 63 L.J. Ch. 873; 71 L.T. 488.
- (ii.) **Ch. D.—Payment into Court—Satisfaction of Counter-claim—R.S.C., 1883, O. xxii., r. 4.**—The plaintiff desired to pay money into Court in satisfaction of a claim made in the counter-claim, but the Paymaster-General refused to receive the money on the ground that the printed form of request for lodgment of money did not contain any statement applicable to the circumstances. On summons by the plaintiff, *Held*, that he was entitled to pay the money in, and that a statement applicable to the circumstances should be inserted in the printed form.—*Hutchinson v. Barker*, 71 L.T. 625.
- (iii.) **C. A.—Payment into Court—Verdict for Smaller Sum—Power to Order Re-Payment of Balance—R.S.C., 1883, O. xxii., r. 5 (b).**—When the defendant does not deny liability, but pays money into Court, and the plaintiff recovers a verdict for a smaller sum, the judge may order the sum awarded to be paid to the plaintiff, and the balance of the money paid in to be paid to the defendant.—*Gray v. Bartholomew*, 43 W.R. 177.
- (iv.) **Ch. D.—Receiver—Surety—Extent of Liability.**—A receiver of the rents and profits of real estate having made default, *held*, that the surety was liable for money received on a fire policy on buildings, part of the estate, for dividends on funds in Court, being proceeds of sale of real estate liable to re-investment, and for pure personality paid out of Court to the receiver for repairs to the real estate, and not so applied; and also for the costs of removing the receiver and appointing a new receiver.—*Graham v. Noakes*, L.R. [1895] 1 Ch. 66; 71 L.T. 623; 43 W.R. 108.
- (v.) **C. A.—Service out of Jurisdiction—R.S.C., 1883, O. xi., rr. 1 (g), 2.**—An action of deceit was brought against three joint defendants, two resident in England, and one in Scotland. *Held*, that the "comparative cost and convenience" was in favour of proceeding against the last defendant in the English action, and that service on him out of the jurisdiction ought to be allowed.—*Williams v. Cartwright*, L.R. [1895] 1 Q.B. 142.
- (vi.) **C. A.—Service out of Jurisdiction—Action of Tort—R.S.C., 1883, O. xi., r. 1 (g).**—The discretion to allow service of a writ of summons out of the jurisdiction whenever any person out of the jurisdiction is a necessary and proper party to an action properly brought against some other person duly served within the jurisdiction, applies to an action of tort.—*Williams v. Cartwright*, 43 W.R. 145.
- (vii.) **P. D.—Salvage—Affidavit of Value—Evidence—Admission of.**—Where the plaintiff, in a salvage action in the county court, not having demanded an appraisal, disputes the value of the *res* as stated in the defendant's affidavit of value, and tenders evidence, the judge must exercise his discretion as to admitting or rejecting such evidence. The value of the *res* ought, as a general rule, to be proved by affidavit or appraisal, and not by evidence at the trial.—*The Argo*, 71 L.T. 640. See Will, p. 61, i.

Principal and Agent:—

- (i.) **Q. B. D.**—*Stockbroker—Running Stocks against Client.*—In an action by an outside broker against a client to recover the balance of account in respect of stocks and shares alleged to have been bought and sold for him, it appeared that the plaintiff appropriated stocks which he already held to the client's account, without his knowledge. *Held*, that the broker had made no contracts for the client, and could not recover differences or commissions. It also appeared that after buying stocks for the client, the broker without his knowledge sold and repurchased them, but charged the client with differences, as though such stocks had been kept open on his account. *Held*, that there had been no real continuing contract in existence for the benefit of the client, and that no real differences had arisen which could be recovered.—*Skelton v. Wood*, 71 L.T. 616.

Railway:—

- (ii.) **Q. B. D.**—*Bye-Law—Validity.*—A bye-law of a railway company provided a penalty for "any passenger using or attempting to use a ticket on any day for which such ticket is not available." The appellant used a ticket on a day for which it was not available, but without any fraudulent intention. *Held*, that in the absence of fraud he was not liable to be convicted, and that the bye-law was invalid.—*Huffam v. North Staffordshire Railway Co.*, L.R. [1894] 2 Q.B. 821; 63 L.J. M.C. 225; 71 L.T. 517; 43 W.R. 28.
- (iii.) **Railway and Canal Commission.**—*Costs—Taxation.*—Where costs are awarded upon an application to the Commissioners, the costs of three counsel will not be allowed, unless the case involves great complication and difficulty, and is one in which a reasonable and prudent man would employ three counsel. The chance of counsel being absent should be considered, but it should be assumed that all the counsel employed can attend throughout the hearing.—*Glamorgan County Council v. G.W.R.*, L.R. [1895] 1 Q.B. 21; 71 L.T. 736.
- (iv.) **C. A.**—*Land taken by Company—User of—Adjoining Owner.*—Where a railway is built upon arches, the leasing of the arches to tenants for short terms is not a user of the company's property which is incompatible with the purposes of their undertaking; and an adjoining owner, who sold to the company the land on which the arches are built cannot restrain the company from such user.—*Foster v. L.C. & D.R.*, 48 W.R. 116.
- (v.) **Ch. D.**—*Landowner—Covenants—Works—Personal Service—Transfer of Undertaking—Specific Performance.*—Where a railway company has, on the purchase of land, and as part of the consideration, covenanted with the vendor to provide accommodation works and do certain personal services, and then by Act of Parliament the company is dissolved, and the undertaking transferred to another, "subject to the obligations and liabilities" of the old company, the vendor can maintain an action against the new company for specific performance of the whole covenant.—*Fortescue v. Lostwithiel & Fowey Railway Co.*, L.R. [1894] 3 Ch. 621; 64 L.J. Ch. 37; 71 L.T. 423; 43 W.R. 138.
- (vi.) **Q. B. D.**—*Purchase of Land—Compensation—Minerals—Railways Clauses Act, 1845, ss. 77-80.*—The fact that a railway company has given notice to an owner to treat for land together with part of the minerals, namely, all the minerals except coal, does not entitle the owner to receive compensation for the coal which is necessary to be left for the support of the line, before the time has arrived for working the same.—*In re Lord Gerard and L. & N.W.R.*, L.R. [1894] 2 Q.B. 915; 63 L.J. Q.B. 764; 71 L.T. 548; 43 W.R. 9.

- (i.) **C. A.**—*Reasonable Facilities for Traffic*.—Decision of Railway Commission (see Vol. 19, p. 100, i.) reversed.—*Darlaston Local Board v. L. & N.W.R.*, 63 L.J. Q.B. 826; 71 L.T. 461; 43 W.R. 29.

Receiver:—

- (ii.) **C. A.**—*Liability of Receiver and Manager of Business*.—A person appointed by the Court receiver and manager of a business is *prima facie* personally liable on contracts entered into by him as receiver and manager, and must look to the assets for an indemnity.—*Burt, Bolton & Hayward v. Bull and Ward*, 43 W.R. 180.

Registration:—

- (iii.) **Q. B. D.**—*Appeal from Revising Barrister*.—No appeal lies from a decision of a revising barrister upon the validity of a notice given by an elector, under the Parliamentary and Municipal Registration Act, 1878, s. 28, sub-s. 14, in the case of duplicate entries of his name upon the list of voters of a borough, selecting the entry to be retained for voting.—*Reg. v. Chadwick*, L.R. [1895] 1 Q.B. 155; 71 L.T. 636.
- (iv.) **Q. B. D.**—*Lodger's Claim—Amendment—Power of Revising Barrister—Parliamentary and Municipal Registration Act, 1878, ss. 23, 28, sub-s. 2.*—A claim to be on the lodgers' list of voters was duly sent in to the overseers, the name of the parliamentary borough being omitted. In the declaration accompanying the claim the claimant stated that he was on the list of parliamentary voters for "the said parliamentary borough" in respect of the same lodgings. The revising barrister refused to amend the claim by inserting the name of the borough, and expunged the claimant's name from the list. *Held*, that he had power to make the amendment, and ought to have done so.—*Treadgold v. Town Clerk of Grantham*, L.R. [1895] 1 Q.B. 163; 64 L.J. Q.B. 29; 71 L.T. 729.
- (v.) **Q. B. D.**—*Two Names on List in respect of one Property*.—The mere fact that a person whether qualified or not is on the register in respect of certain premises, is not enough to keep off a person who is properly qualified in respect of the same premises.—*Warren v. Maule*, 71 L.T. 731.

Restraint of Trade:—

- (vi.) **H. L.**—*Contract—Validity—Unlimited in Space*.—Decision of C. A. (see Vol. 18, p. 97, iii.) affirmed.—*Nordenfeldt v. Maxim-Nordenfeldt Guns and Ammunition Co.*, L.R. [1894] A.C. 535; 63 L.J. Ch. 908; 71 L.T. 489.

Revenue:—

- (vii.) **C. A.**—*Account Duty—Voluntary Disposition—Release of Mortgage Debt—Benefit to Donor—Customs, &c., Acts, 1881, s. 38, sub-s. 2 (a); 1889, s. 11, sub-s. 1.*—A mortgagee obtained an order for foreclosure, but before it became absolute, by an arrangement between the mortgagor, the mortgagee, and the defendant, the mortgagee's son, the mortgagor conveyed the premises to the defendant in fee simple, and the defendant covenanted to pay the mortgagee an annuity during his life. Upon the death of the mortgagee account duty was claimed upon the amount of the mortgage debt. *Held*, that there was a "gift" of the mortgage debt to the defendant, and by reason of the covenant to pay the annuity there was a "benefit to the donor by contract," such "benefit" not being confined to a benefit or reservation out of the subject-matter of the gift, and that, as the mortgage debt was personal property, the account duty was payable.—*Attorney-General v. Worrall*, L.R. [1895] 1 Q.B. 99; 43 W.R. 118.

- (i.) **Q. B. D.**—*Account Duty—Voluntary Disposition—Marriage Settlement—Children of Former Marriage—Customs and Inland Revenue Acts, 1881, s. 38, sub-s. 2; 1889, s. 11.*—Where a widow settles her property on a second marriage, her children by her former marriage are within the marriage consideration, and limitations in their favour are not "voluntary dispositions."—*Attorney-General v. Jacobs-Smith*, 71 L.T. 725.
- (ii.) **Q. B. D.**—*Excise—Proceedings to Recover Penalties—Summary Jurisdiction—Proof of Authority—7 & 8 Geo. 4, c. 53, s. 71—Inland Revenue Act, 1890, ss. 21, 24.*—Where proceedings to recover an excise penalty are taken by an Inland Revenue officer before a court of summary jurisdiction, an allegation in the information that the officer is prosecuting by the order of the commissioners is sufficient proof of such order, the provisions of the former Act not being impliedly repealed by the latter Act.—*Dyer v. Tulley*, L.R. [1894] 2 Q.B. 794; 63 L.J. M.C. 272; 43 W.R. 61.
- (iii.) **C. A.**—*Income Tax—Assessment—Appeal Against—Right to be put upon Oath.*—X. appealed against his income tax assessment. He sent in accounts, and tendered himself for examination on oath for the purpose of verifying them. The commissioners refused to put him upon oath, and upon the evidence rejected the appeal. He obtained a rule nisi for a mandamus to the commissioners to hear and determine the matter, or to state a special case. *Held*, that the decision of the commissioners was merely on a question of fact, and that even if there was a question of law in the contention that X. was entitled to be put upon oath, and that his oath would be conclusive, it was not one in respect of which a mandamus ought to be granted.—*Reg. v. Chew*, 71 L.T. 541.
- (iv.) **C. A.**—*Income Tax—Trade Exercised in United Kingdom—Agent.*—R., a French wine merchant, employed G. as his agent in this country to obtain orders. The wine was sent from France direct to the customers. The invoices were made out by R., and sent to G., who sent them to the customers. The purchase-money was generally sent direct to R., and in all cases the receipts were made out by R., and sent by him to the customers. *Held*, that R. exercised a trade in this country and was assessable in the name of G. as his agent.—*Grainger & Son v. Gough*, L.R. [1895] 1 Q.B. 71; 43 W.R. 184.
- (v.) **Q. B. D.**—*Income Tax—English Company—Business Abroad—Profits not remitted to England.*—Two English companies carried on business abroad. The profits were all earned abroad in both cases. In one case the board of directors in England made the contracts for the supply of materials. *Held*, that the companies were liable to pay income tax only on such part of the profits as was remitted to England for distribution, and not on the sums retained and distributed as dividends abroad.—*Denver Hotel Co. v. Andrews; San Paulo Railway Co. v. Carter*, 43 W.R. 109.

Settled Estate :—

- (vi.) **Ch. D.**—*Statutory Power of Sale—Authority to Exercise—Female Trustees—Settled Estates Act, 1887.*—Authority to exercise the statutory power of sale was given to two ladies, the trustees of a will, limited to their joint lives, upon evidence that the petitioners had been unable to find any other suitable trustees.—*In re Peake's Settled Estates*, L.R. [1894] 3 Ch. 520; 71 L.T. 371.

Settled Land :—

- (vii.) **C. A.**—*Sale of Land—Costs—Settled Land Act, 1882.*—Decision of Ch. D. (*see* Vol. 19, p. 139, vi.) reversed.—*Smith v. Lancaster*, L.R. [1894] 3 Ch. 439; 63 L.J. Ch. 842; 43 W.R. 17; 71 L.T. 511.

- (i.) **C. A.**—*Building Lease—Settled Land Acts, 1882, s. 8, subs-s. 1; 1884, s. 7.*—A lease made partly in consideration of the outlay by the lessee of a specified sum in improvements is a building lease within the section first mentioned. The Court will not, in the exercise of its discretion under the latter section, sanction a building lease if the repairs or improvements agreed to be done by the lessor are such as an ordinary landlord is expected to do.—*In re Daniell's Settled Estates*, L.R. [1894] 3 Ch. 503; 71 L.T. 563; 43 W.R. 138.
- (ii.) **Ch. D.**—*Glebe—Lands Clauses Act, 1845; Settled Land Acts, 1882, ss. 2, 21, 32; 1887, ss. 1, 2.*—An award under an Inclosure Act to a vicar "and his successors" does not constitute a settlement within sect. 2 of the Act of 1882. But the proceeds of sale of glebe land taken under compulsory powers, and paid into Court, may be dealt with under sect. 2 of that Act as "money liable to be laid out in the purchase of land to be made subject to a settlement."—*E. p. Vicar of Castle Bytham*, 64 L.J. Ch. 156; 71 L.T. 606.

Settlement:—

- (iii.) **Ch. D.**—*Marriage—After-acquired Property—Covenant to Settle.*—If income not originally included in an after-acquired property clause is invested so as to indicate an intention of the owner to treat it as capital, such investment becomes subject to the covenant. The same result follows in the case of a sale of capital property not originally included in the covenant, where the proceeds are laid out in the purchase of property coming within the terms of the covenant.—*Wallis v. Bendy*, L.R. [1895] 1 Ch. 109.
- (iv.) **Ch. D.**—*Voluntary—Trust for Class—Period of Ascertaining.*—A fund was settled by voluntary deed upon such of the younger children of a third person as should attain twenty-one. *Held*, that no additions could be made to the class after one child had attained a vested interest, and that such child was entitled to be paid his share.—*Knapp v. Vassal*, L.R. [1895] 1 Ch. 91; 71 L.T. 625.

Ship:—

- (v.) **C. A.**—*Charter-Party—Demurrage.*—Lay days were to count from forty-eight hours after the arrival of the ship. The consignees allowed the discharge to begin in the afternoon of the day of arrival. *Held*, that "running days," in the clause providing for loading, meant calendar days and not periods of twenty-four hours, and that the whole of the first day was a lay day as the discharge had been allowed to begin.—*The Katy*, 71 L.T. 799.
- (vi.) **C. A.**—*County Court—Appeal from—County Courts Admiralty Jurisdiction Act, 1868, ss. 26, 31—County Courts Act, 1888, s. 120.*—An appeal now lies on a question of law from the judgment of a county court in an admiralty action, though the amount of the judgment is less than £50, and though no security for costs has been given.—*Neptune Steam Navigation Co. v. Slater & Procter*, 71 L.T. 544; 43 W.R. 65.
- (vii.) **C. A.**—*Jurisdiction—Necessaries.*—The Court has jurisdiction over a claim for necessities supplied to a foreign ship in a foreign port, even though the port is not in the high seas.—*The Mecca*, 71 L.T. 711.
- (viii.) **P. D.**—*Prohibition against Inferior Court—Injunction.*—A judge of the Admiralty Division has power to grant a prohibition with reference to a matter pending before an inferior Court, and to issue an injunction against a party proceeding in an inferior Court to restrain him from proceeding.—*The Teresa*, 71 L.T. 342.

- (i.) **P. D.—Practice—Jury—Assessors.**—In a collision action in a county court, where one party asks for a jury and the other demands assessors, the trial must be by judge and assessors.—*Kelly v. Isle of Man Steam Packet Co.*, 71 L.T. 731.
- (ii.) **P. D.—General Average.**—Where a ship has stranded and has been got off by means of her engines there must be a general average contribution for the coal used.—*The Bona*, 71 L.T. 551.
- (iii.) **C. A.—Insurance—Damage to Part of Goods—Costs of Examination.**—A cargo of iron in cases was insured free from average under three per cent., average to be recoverable on each package separately or on the whole. Some of the iron was damaged, and the whole of the cargo was examined. *Held*, that the underwriters were not liable for the costs of examination of the undamaged part of the cargo.—*Lysaght v. Coleman*, L.R. [1895] 1 Q.B. 49.
- (iv.) **C. A. & P. D.—Maritime Lien—Liabilities Incurred by Master—Mortgagees—Priorities—Merchant Shipping Act, 1889, s. 1.**—The defendants, shipowners in London, contracted for the supply of coal to their ship then about to sail. Part of the payment was to be by bill of exchange drawn by the master on the defendants in favour of the seller. The bill so drawn was accepted but dishonoured, and the master issued a writ *in rem*, and arrested the ship, claiming the amount of the bill and charges, and the costs of an action against him as drawer. Prior mortgagees intervened. *Held*, that the test of the disbursements or liabilities of the master in respect of which there was a lien, is whether they are such as would, without express authority, have pledged the owner's credit. In the present case there was no lien created to the prejudice of the interveners.—*Oriente*, L.R. [1894] P. 271; 63 L.J. P. 129; 71 L.T. 343 and 711.
- (v.) **C. A.—Narrow Channel—The Swin.**—The passage known as the Swin is a narrow channel, and every steamship navigating it must, when it is safe and practicable, keep to the starboard side of the channel.—*The Minnie*, L.R. [1894] P. 336; 71 L.T. 715.
- (vi.) **P. D.—Thames Rules—Dredging up—Stern Light.**—A steamer dredging up the Thames stern first on a dark night, to go into docks, and showing only her stern light to ships coming down, must keep a look-out up river, and give a sufficient signal when she sees a ship coming down.—*The Juno*, 71 L.T. 341.
- (vii.) **H. L.—Wreck—Obstruction—Liability of Owner—Harbour, &c., Clauses Act, 1847, s. 56.**—A ship was wrecked at the mouth of a river, and was abandoned by the owner. She became an obstruction and a danger to navigation. The River Commissioners accordingly, after notice to the owners, destroyed the obstruction, and sold the materials, and then sued the owners for the expenses. *Held*, that the owners were not liable.—*Arrow Shipping Company v. Tyne Improvement Commissioners*, L.R. [1894] A.C. 508; 63 L.J. P. 146; 71 L.T. 346.

Solicitor :—

- (viii.) **Ch. D.—Costs—Mortgage of Leaseholds.**—On a mortgage of leasehold property held under several leases by the original lessee, his solicitors furnished the mortgagee's solicitors with a short statement of dates and particulars of the leases, which were all in the same form, and a form of the covenants. *Held*, that no title had been deduced, and that the solicitors were not entitled to the scale fee.—*W'elby v. Still*, L.R. [1894] 3 Ch. 691; 63 L.J. Ch. 931; 43 W.R. 73.

- (i.) **Ch. D.—Costs—Scale—Lease—Item Bill—General Order, August, 1882**
—Counterpart.—A lease in writing for a term not exceeding three years at a rack-rent, or an agreement for the same is within Schedule I., Part II. of the General Order. The lessee on paying the bill of the lessor's solicitor is entitled to deduct the costs of the counterpart from the scale charge. The delivery of an item bill under Schedule II. for business to which Schedule I. applies does not entitle the party chargeable to insist on taxation under Schedule II.—*In re Negus*, L.R. [1895] 1 Ch. 73; 71 L.T. 716; 64 L.J. Ch. 79; 43 W.R. 68.
- (ii.) **Q. B. D.—Misconduct—Punishment—Discretion—Solicitors Act, 1843, s. 32.**—It having been proved that a solicitor has allowed an unqualified person to use his name, the Court has no discretion as to punishment, but must strike him off the rolls.—*In re Kelly*, 43 W.R. 191.
- (iii.) **C. A.—Partnership—Fraud of Partner—Liability.**—The plaintiff, a client of a firm of solicitors in which R. was a partner, was negotiating through R. for a loan from M., another client of the firm, on the security of land. R. falsely represented that M. required further security, and induced the plaintiff to hand him certain bonds, which he misappropriated. M. knew nothing about the bonds. The plaintiff sought to make M. and the partners of R. liable for the loss of the bonds. *Held*, that M. was not liable, as he had not authorised the inclusion of the bonds in the security; but that R.'s partners were liable as the transaction was a partnership matter.—*Rhodes v. Moules*, 71 L.T. 599; 43 W.R. 99.
- (iv.) **C. A.—Retainer—Agreement as to Conduct of Defence.**—X., the defendant in an action for infringement of a patent, agreed with M., the seller of the article complained of, that M. should conduct the defence and that his solicitor should be retained, X. being indemnified. X. retained M.'s solicitor to act "in the defence of the action and any appeals therefrom," and a deed of indemnity was executed. X. was defeated in the Court of Appeal. An appeal was presented to the House of Lords which X. wished to stop, and he withdrew the retainer. *Held*, that M. was entitled to an injunction to restrain X. from breaking his agreement and withdrawing his retainer. But a further indemnity against extra costs were ordered.—*Montforts v. Marsden*, L.R. [1895] 1 Ch. 11; 64 L.J. Ch. 52; 71 L.T. 620.

Sunday Observance:—

- (v.) **C. A.—Lectures—Entertainment—Chairman and Keeper—Liability of—Lord's Day Act, 1781, ss. 1, 2.**—Decision of Q. B. D. (*see* Vol. 20, p. 26, i.) affirmed.—*Reid v. Wilson*, 43 W.R. 161.

Surety:—

- (vi.) **C. A.—Payment by Surety—Co-Surety—Right of Proof.**—Decision of Ch. D. (*see* Vol. 20, p. 18, v.) affirmed.—*Morgan v. Hill*, L.R. [1894] 3 Ch. 400; 64 L.J. Ch. 6; 71 L.T. 557; 43 W.R. 1.

Tenant for Life:—

- (vii.) **Ch. D.—Settled Shares—New Shares allotted in respect of Old—Dividend.**
—A company resolved that its capital should be increased, and an offer was made to each shareholder to apply one half of a dividend, which was declared shortly after, in payment for new shares then allotted to him, the amount to be paid in cash if he declined the allotment. The Court considered that there was no intention of capitalising the profits. Certain shares were subject to the trusts of a will, and

the trustees accepted the new shares allotted to them. *Held*, the tenant for life was entitled to so much of the value of the shares as represented the dividend declared, and that the balance ought to be treated as capital.—*Malam v. Hitchens*, L.R. [1894] 3 Ch. 578; 63 L.J. Ch. 797; 71 L.T. 655.

Tithes:—

- (i.) **Q. B. D.**—*Redemption Money—Valuer—Application by—County Court—Tithe Act, 1891, s. 10, sub-s. 4.*—A county court has jurisdiction to hear applications by a valuer duly appointed by the commissioners under the Tithe Acts for recovery of sums due in respect of redemption money.—*Reg. v. Patterson*, L.R. [1895] 1 Q.B. 31; 64 L.J. Q.B. 20; 71 L.T. 671; 48 W.R. 127.

Title to Land:—

- (ii.) **Ch. D.**—*Possession and Acts of Ownership—Presumption.*—Long continued and uninterrupted possession and acts of ownership must be referred to a good title, provided, first, that the grant presumed must be good at law, and secondly, that no presumption is made which is contrary to proved fact.—*Eliot v. Mayor, &c., of Bristol*, 71 L.T. 659.

Trade Name:—

- (iii.) **C. A. & Ch. D.**—*Avoidance of Registration as Marks—Right to restrain User.*—The defendants having succeeded in compelling the words "Yorkshire Relish," which the plaintiff had registered as a trade-mark for sauces, to be taken off the register, began to label their sauces with those words. *Held*, that the plaintiff, having shewn that the trade previously knew that the words denoted his sauce, was entitled to restrain the defendants from using them without taking precautions to prevent purchasers from being misled.—*Powell v. Birmingham Vinegar Brewery Co.*, L.R. [1894] 3 Ch. 449; 71 L.T. 393.
- (iv.) **Ch. D.**—*Company—Calculated to Deceive—Affidavit—Striking out Paragraph.*—A foreign company trading in this country is entitled to restrain the use of a name so similar to its own as to be calculated to deceive customers. To state that the members of a plaintiff company are undischarged bankrupts is irrelevant to the action, and a paragraph in an affidavit containing such an allegation will be struck out.—*National Folding Box and Paper Co. v. National Folding Box Co.*, 48 W.R. 156.

Tramway:—

- (v.) **H. L.**—*Compulsory Purchase—Basis of Valuation.*—Decision of C. A. (see Vol. 19, p. 144, i.) affirmed.—*London Street Tramways Co. v. London County Council*; *Edinburgh Street Tramways Co. v. Lord Provost, &c., of Edinburgh*, L.R. [1894] A.C. 457; 63 L.J. Q.B. 769; 71 L.T. 301.

Trustee:—

- (vi.) **C. A.**—*Breach of Trust—Investment—Liability of Retiring Partner—Limitations.*—Decision of Ch. D. (see Vol. 19, p. 107, iv.) affirmed.—*Tucker v. Tucker*, L.R. [1894] 3 Ch. 429; 63 L.J. Ch. 737; 71 L.T. 453.

Vendor and Purchaser:—

- (vii.) **Ch. D.**—*Condition—Root of Title—Discovery of Prior Defect.*—A purchaser cannot make any objection in respect of a defect in the title discovered aliunde, which is prior to the document specified by the

conditions as the root of title, such conditions providing that the prior title shall not be "required, investigated, or objected to."—*In re National Provincial Bank and Marsh*, 71 L.T. 629; 43 W.R. 186.

- (i.) **Ch. D.**—*Interest on Purchase Money—Wilful Default—Damages for Delay*.—A contract provide for completion on 29th September, 1893, and for payment of interest in case of delay from any cause other than wilful default of the vendor. The title was accepted and the draft conveyance sent to the vendor, framed on the supposition that a necessary admittance and surrender had been made. On finding that it had not been done the purchaser wrote on 18th September requiring the vendor to take the necessary steps. Owing to the vendor's neglect the admittance was not completed till 14th December. The purchaser was ready to complete on 29th September, and paid the money into a bank, but possession was refused. He took out a summons for a declaration that he was not liable to pay interest, and that he was entitled to damages for loss caused by the delay in getting possession. *Held*, that there was wilful default on the part of the vendor, and that the purchaser was not liable to pay interest, but that damages could not be awarded on a summons.—*In re Wilson and Stephens*, L.R. [1894] 3 Ch. 546; 63 L.J. Ch. 863; 71 L.T. 388; 43 W.R. 23.

Vestry :—

- (ii.) **Ch. D.**—*Rates—Illegal Expenses*.—A water company had been held entitled to make a special charge for supplying water to fixed baths in dwelling-houses. The defendants were restrained by the Court from applying money out of the rates of the parish in contributing towards the costs of persons who were desirous of trying the question a second time, or in doing anything to instigate or aid persons to resist payment of the charge. — *Attorney-General v. Camberwell Vestry*, 71 L.T. 478; 63 L.J. Ch. 878.

Warehouseman.—See Bankruptcy, p. 34, iv.

Waterworks :—

- (iii.) **Q. B. D.**—*Rate—Summons—Demand—Waterworks Clauses Act, 1847, ss. 70, 74, 85—Railways Clauses Act, 1845, s. 140*.—Where a summons has been taken out for arrears of water rate, it is not necessary as a condition precedent to the making of an order, that a demand should have been made for the amount before the issue of the summons.—*East London Waterworks Company v. Kyffin*, L.R. [1895] 1 Q.B. 55; 71 L.T. 615.
- (iv.) **Ch. D.**—*Water Company's District—Sewerage Works*.—The defendants were constructing sewerage works within the plaintiffs' district, and in connection therewith were sinking a well, and providing pumps and pipes for the purpose of flushing their sewers. *Held*, that these were not "waterworks" within the meaning of the Public Health Act, 1875, and that the defendants were entitled to construct and use them.—*West Surrey Water Company v. Chertsey Guardians*, L.R. [1894] 3 Ch. 513; 63 L.J. Q.B. 806; 71 L.T. 368; 43 W.R. 7.

Weights and Measures :—

- (v.) **Q. B. D.**—*Coal in Sacks—Label—Representation of Seller—Weights and Measures Act, 1889, s. 29*.—A metal label attached to a sack of coal indicating that the sack when full contains half a hundredweight, constitutes a representation within the meaning of the section above

mentioned, that the sack when filled and delivered by the carter to the purchaser contains that weight of coal.—*Franklin v. Godfrey*, 63 L.J. M.C. 289; 43 W.R. 46.

Will :—

- (i.) **Ch. D.**—*Bequest of Leaseholds upon Trusts—Repairs—Corpus or Income.*—Testator gave all his residue to trustees upon trust to receive the rents and profits, and in the first place to pay all the costs, charges, and expenses, and out of the balance to pay certain legacies and annuities, the latter to abate in case the balance should be insufficient. The residue included leaseholds, and the trustees, after notice from the lessors, executed repairs at a cost greater than the value of the remainder of the term. *Held*, that the cost of the repairs was payable out of income, and not out of corpus.—*Debney v. Eckett*, 71 L.T. 659; 43 W.R. 54.
- (ii.) **C. A.**—*Charity—Lapse—Cy-pres.*—Decision of Ch. D. (see Vol. 20, p. 28, ii.) affirmed.—*Rymer v. Stanfield*, L.R. [1895] 1 Ch. 19; 71 L.T. 590; 43 W.R. 87.
- (iii.) **Ch. D.**—*Construction—Condition to Resettle—Money Liable to be Laid Out in Land.*—A testator gave his residue to A. on condition that A. should disentail and resettle property the subject to a settlement, and of which A. was tenant in tail. The property comprised money liable to be laid out in land. *Held*, that to comply with the condition such money must be included in the resettlement.—*Bassett v. St. Levan*, 71 L.T. 718; 43 W.R. 165.
- (iv.) **C. A.**—*Construction—Power or Trust—Release of.*—Testator gave his wife for life the income of a fund, and provided that if he had no children "my wife may bequeath or appoint" the fund "to such of my relatives or next-of-kin as she shall think proper: the remainder of my property to be divided into forty-three parts." The forty-three parts were disposed of, and the wife was appointed "residuary legatee." There were no children, the wife survived the testator, and executed a release of her power of appointment. She then claimed the fund absolutely. *Held*, that even if the fund did not pass under the bequest of "the remainder of my property," the wife did not become entitled thereto by releasing her power.—*Brierley v. Brierley*, 43 W.R. 36.
- (v.) **Ch. D.**—*Construction—"Relations"—Illegitimacy—Power of Appointment—Powers Law Amendment Act, 1874.*—Testator gave half his residue after his wife's death "to my wife's relations as she may direct." The wife was, to the testator's knowledge, illegitimate, but had always been treated as legitimate by her parents; she was forty-seven years old and had no children. *Held*, that "relations" meant persons who would have been her relations had she been legitimate, that the power was one of distribution only, and that the objects were therefore confined to the statutory next-of-kin of the wife; and that the Act above mentioned did not alter the law on this point.—*Starkey v. Eyres*, L.R. [1894] 3 Ch. 565; 63 L.J. Ch. 779; 43 W.R. 70.
- (vi.) **Ch. D.**—*Construction—Mortmain—Mortmain Acts, 1888, s. 4; 1891, s. 5.*—A gift of land to a charity in the will of a person dying after the Act of 1891 is valid although the interest given is reversionary.—*Forbes v. Hume*, 71 L.T. 609; 43 W.R. 188.
- (vii.) **Ch. D.**—*Construction—"Die without leaving any Male Issue"—Wills Act, s. 29.*—Devise of land to A., his heirs and assigns, with a gift over if A. should "die without leaving any male issue." *Held*, that A. took an estate in fee simple subject to an executory devise over.—*Edwards v. Edwards*, L.R. [1894] 3 Ch. 644; 43 W.R. 169.

- (i) **Ch. D.**—*General Power of Appointment—Real Estate—Personal Estate—French Will—Originating Summons—Form of Question.*—An English lady, domiciled in France, had a general power of appointment over a fund representing a share of the proceeds of land sold in a partition action, which was liable to be laid out in land under the Settled Estates Act, 1877. She made a French will giving all her properties and chattels to T. *Held*, that the will was an exercise of any power of appointment which the testatrix had over personal estate, and that the fund, being personal estate in form passed under it. An originating summons for the opinion of the Court on the construction of an instrument should state the questions categorically, and not in general terms, such as "who is entitled to" the property in question.—*Lloyd v. Tardy*, L.R. [1894] 3 Ch. 607; 63 L.J. Ch. 822; 71 L.T. 401.
- (ii) **Ch. D.**—*Gift of £3 per cent. Annuities.*—In sect. 25, sub-sect. 2, of the National Debt Act, 1888, the word instrument includes a will.—*Churchill v. St. George's Hospital*, L.R. [1894] 3 Ch. 649; 71 L.T. 516; 64 L.J. Ch. 42; 43 W.R. 95.
- (iii) **Ch. D.**—*Land Abroad—Proceeds of Sale.*—The proceeds of sale of foreign land can be settled by an English will in a manner valid by English law, even if such a settlement of the land itself is invalid by the *lex loci*. But a trust invalid by the *lex loci* cannot be enforced in this country until a sale has taken place.—*Whitcomb v. Percy*, L.R. [1895] 1 Ch. 83; 43 W.R. 134.
- (iv) **Ch. D.**—*Life Estate by Implication.*—Under a bequest, after the death of A., to the testator's statutory next-of-kin, A. takes a life estate by implication; but not so where the bequest is to persons who are some members of the class of the testator's next-of-kin.—*Chamberlain v. Springfield*, L.R. [1894] 3 Ch. 603.
- (v) **Ch. D.**—*Locke King's Act, 1877—Vendor's Lien—Building Agreement.*—A building agreement provided for leases with ground rents up to £180 a year; and provided that the lessor should have the option of purchasing from the lessee further ground rents to be created out of other land of the lessor, which, if such option were not exercised, was to be conveyed to the lessee at a small and specified price. The lessee exercised the option and died. *Held*, that her devisees took the land subject to payment of the purchase money in respect of the further ground rents.—*Brooman v. Withall*, L.R. [1894] 3 Ch. 558; 63 L.J. Ch. 855; 71 L.T. 481; 48 W.R. 51.
- (vi) **C. A.**—*Remoteness.*—Decision of Ch. D. (*see* Vol. 19, p. 147, i.) affirmed.—*Tullett v. Colville*, L.R. [1894] 3 Ch. 351; 63 L.J. Ch. 790; 71 L.T. 413.
- (vii) **P. D.**—*Probate—Revocation—Undue Execution—Presumption.*—In an action to revoke probate, granted in common form eight years ago, on the ground of undue execution, both of the attesting witnesses swore that they did not sign in the testator's presence, but in other points their evidence did not agree. *Held*, that the presumption of law *omnia præsuntur rite esse acta* must prevail against their evidence.—*Dayman v. Dayman*, 71 L.T. 699.

Quarterly Digest.

INDEX

of the cases reported during February, March, and April, 1895.

Where a case has already been given in the Digest for a preceding quarter, the additional report is given after the name of the case, with a reference to the volume of the Digest in which it first appeared, the thick number being the number of the volume.

- ABBOTT v. WOLSEY, 87, v.
Alabaster v. Harness, 82, viii.
Alert, the, 70, vi.
Anderson v. A., 71, vi.
——— v. Gorrie (L.R. [1895]
1 Q.B. 668), 20, 48, iii.
Argo, the (L.R. [1895] P. 33; 64
L.J. P. 12; 43 W.R. 415), 20,
51, vii.
Atlantic and North-Western Rail-
way Co. v. Wood, 67, iv.
Attenborough v. Henschel, 70, vii.
A.-G. v. Conduit Colliery Co., 74, ii.
——— v. Jacobs Smith (L.R. [1895]
1 Q.B. 472; 43 W.R. 253), 20,
54, i.
——— v. Lloyd, 86, vi.
——— v. Worrell (64 L.J. Q.B. 141;
71 L.T. 807), 20, 53, vii.
——— for Trinidad v. Bourne,
71, iv.
Aubourg v. A., 74, iii.

B. v. B., 74, v.
Baird v. Mayor, &c., of Tunbridge
Wells (64 L.J. Q.B. 145), 20,
9, ii.
Bank of England, *e. p.* (64 L.J. Ch.
189), 20, 41, i.
——— of S. Australia, *re* (43 W.R.
299), 20, 18, i.
———, *re*, 70, iv.
Barnett v. Hickmott, 86, ii.
Barry Railway Co. v. Taff Vale
Railway Co., 85, iv.
Bartlett v. Rice, 74, vii.
Baxter v. France, 83, ix.; 83, x.

Beaver v. Master in Equity, 86, vii.
Beesley and King, *re* (64 L.J. Q.B.
126), 20, 33, vii.
Bell v. Earl of Dudley (L.R. [1895]
1 Ch. 182; 64 L.J. Ch. 291; 73 L.T.
14), 20, 42, vi.
Bentley Breweries, *e. p.*; *re* Waite
(71 L.T. 778), 20, 32, vi.
Berni v. Thorney, 77, i.
Bexley Railway Co. v. North (64
L.J. M.C. 17), 20, 11, vii.
Biggs v. Dagnall, 83, vi.
Blake, *re*, 78, iii.
Blazer Fire Lighter, *re* (L.R. [1895]
1 Ch. 402; 64 L.J. Ch. 161;
43 W.R. 364), 20, 38, iii.
Boake v. Stevenson (L.R. [1895]
1 Ch. 358; 64 L.J. Ch. 261), 20,
50, vii.
Board of Trade, *e. p.*; *re* Lamb
(64 L.J. Q.B. 71), 20, 33, ii.
——— *e. p.*; *re* Marsh
(71 L.T. 776), 20, 33, iii.
Bolton v. Curre (L.R. [1895]
1 Ch. 544; 64 L.J. Ch. 164;
71 L.T. 752), 20, 36, iii.
Bolton & Co., *re*, 68, vi.
Bona, the, 89, iii.
Booth v. Arnold, 90, vi.
Botten v. City and Suburban Build-
ing Society, 66, v.
Bowling and Welby, *re*, 63, v.
Boyd v. Bischoffsheim (64 L.J. Ch.
148), 20, 49, iii.
Bradford, *goods of*, 94, i.
Bradford, Corporation of, v. Pickles,
92, iv.

- Briesemann, *goods of*, 94, ii.
 Broderip v. Salomon, 69, i.
 Brophy v. A.-G. of Manitoba, 67, v.
 Brown v. Law, 92, iii.
 — v. Wren, 73, iv.
 Bruno v. Eyston (64 L.J. Ch. 157), 20, 49, i.
 Bryant, *c. p.*; *re* B., 66, ii.
 Budgett v. B. (L.R. [1895] 1 Ch. 202; 64 L.J. Ch. 209), 20, 39, iv.
 Burns-Burns (Trustee of) v. Brown (L.R. [1895] 1 Q.B. 324; 64 L.J. Q.B. 248; 71 L.T. 825), 20, 33, i.
 Burt v. Bull (L.R. [1895] 1 Q.B. 276; 64 L.J. Q.B. 232; 71 L.T. 810), 20, 53, ii.
 Bury v. Thompson (L.R. [1895] 1 Q.B. 231; 71 L.T. 846), 20, 43, ii.
 — v. —, 76, i.
 CALHAM v. SMITH, 93, vi.
 Campbell v. C., 83, iii.
 Canterbury (Mayor of) v. Wyburn, 67, iii.
 Castle Bytham (Vicar of), *c. p.* (L.R. [1895] 1 Ch. 348; 64 L.J. Ch. 116), 20, 55, ii.
 Chamberlain v. Springfield (64 L.J. Ch. 201), 20, 61, iv.
 Charlton, *the*, 88, iv.
 Chartered Bank of India, &c., v. Macfadyen, 64, iii.
 Chattock v. Bellamy, 66, vi.
 Churchward v. C., 74, iv.
 City of Newcastle, *the*, 90, ii.
 Clark, *c. p.*; *re* Chapman, 64, vi.
 Cleveland Water Co. v. Redcar Local Board (L.R. [1895] 1 Ch. 168), 20, 45, iii.
 Collingham v. Sloper (64 L.J. Ch. 149), 20, 49, iv.
 Comyns v. Hyde, 70, iv.
 Cooke, *goods of*, 64, i.
 Cooper v. Stephens, 70, v.
 County Estates Co. v. Graves, 68, ii.
 Courage v. O'Shea, 65, vii.
 Cunnack v. Edwards, 73, ii.
 D. OWEN & Co. v. CRONK, 84, iv.
 Daniell's Settlement, *re* (64 L.J. Ch. 173), 20, 55, i.
 Davis v. Foreman (64 L.J. Ch. 187), 20, 42, vii.
 Dechêne v. City of Montreal (64 L.J. P.C. 14), 20, 35, iii.
 Deer v. Bell, 76, viii.
 Delano, *the* (64 L.J. P. 8), 20, 55, vi.
 Densham's Trade Mark, *re*, 91, ii.
 Diana, *the* (64 L.J. P.C. 22), 20, 23, i.
 Durham v. Northen, 93, vii.
 E. LONDON WATERWORKS v. KYFFIN (64 L.J. M.C. 32), 20, 59, iii.
 Ecclesiastical Commissioners v. Wodehouse, 72, i.
 Edwards v. E. (64 L.J. Ch. 179), 20, 60, vii.
 Ehrman v. E. (72 L.T. 17), 20, 48, ii.
 Emsley v. Mitchell (64 L.J. Ch. 92), 20, 35, ii.
 Englishman, *the*, 89, vii.
 Evans v. Owen, 73, i.
 FARMER v. WATERLOO, &C., RAILWAY Co., 85, v.
 Fenna v. Clare, 80, vi.
 Fletcher v. Brandon, *c. p.*, 66, i.
 Floating Dock Co. of St. Thomas, *re*, 68, iv.
 Forbes v. Hume, 93, ii.
 Fordom v. Parsons (64 L.J. M.C. 22), 20, 45, i.
 Foster v. L.C. & D.R. (64 L.J. Q.B. 65; 71 L.T. 855), 20, 54, iv.
 Fred, *the*, 90, v.
 Freeman v. Parker, 91, v.
 GENERAL ASSURANCE Co. v. WORSLEY, 76, iii.
 General Phosphate Co. *re* (64 L.J. Ch. 195), 20, 38, ii.
 Gerard, Lord, & L. & N.W.R., *re*, 85, iii.
 Gibbon v. Phillips, 80, iii.
 Gibson, *c. p.*; *re* Low, 65, iii.
 Gilchrist's Trusts, *re*, 67, i.
 Gipsy Queen, *the*, 90, iii.
 Glamorgan County Council v. G.W.R. (64 L.J. Q.B. 138), 20, 52, iii.
 Graham v. Noakes (64 L.J. Ch. 98), 20, 51, iv.
 Grainger v. Gough (64 L.J. Q.B. 198; 71 L.T. 802), 20, 54, iv.
 Gray v. Bartholomew (L.R. [1895] 1 Q.B. 209; 64 L.J. Q.B. 125; 71 L.T. 867), 20, 51, iii.
 Grant v. Thompson, 78, vi.
 Great Clacton Local Board v. Young, 77, v.
 G.N.R. v. Palmer, 85, i.
 Griffiths & Morris, *re*, 75, v.
 Guilford v. Lambeth (64 L.J. Q.B. 95; 71 L.T. 738), 20, 49, vii.
 Gwilliam v. Twist, 79, ii.

- HADLEY v. BREEDOM, 66, iv.
Halestrap v. Gregory, 80, v.
Hambrough v. Mutual Life Assurance Co., 75, ii.
Hamelin v. Bannerman, 87, iii.
Hammond v. Pulsford, 79, iii.
Hanfstaengl v. American Tobacco Co., 70, iii.
— v. Baines, 70, ii.
Harris v. L.C.C., 92, v.
Henderson v. Williams, 72, iii.
Herefordshire County Council and Leominster Town Council, *re* (64 L.J. A.C. 26), 20, 44, ii.
Hildred v. Ingram, 81, ii.
Hinchliffe, *re* (L.R. [1895] 1 Ch. 117), 20, 45, iv.
Hine v. Steamship Insurance Co., 89, v.
Hirsche v. Sim (64 L.J. P.C. 1), 20, 35, iv.
Hollom v. Wichelow, 81, iv.
Holmes v. Formby (L.R. [1895] 1 Q.B. 174; 71 L.T. 842), 20, 46, v.
Holywell Assessment Committee v. Halkyn Mines Drainage Co., 82, iii.
Hood-Barra v. Cathcart, 83, viii.
Hudson v. Walker, 82, v.
Hulbert and Crowe, *re*, 90, viii.
Hydarnes Steamship Co. v. Indemnity Assurance Co., 89, iv.
Hyslop v. Chamberlain (64 L.J. Ch. 168), 20, 31, i.
ISAACSON, *e. p.*; *re* MASON, 65, v.
Islington Vestry v. Cobbett (64 L.J. M.C. 36), 20, 46, v.
Issue Co., *re* (L.R. [1895] 1 Ch. 226; 64 L.J. Ch. 131; 43 W.R. 267), 20, 36, ii.
JACKSON, *e. p.*; *re* ALDERSON, 64, iv.
Jamieson and Newcastle Insurance Association, *re*, 89, vi.
Jones v. Inland Revenue Commissioners, 87, i.
Katy, *the* (L.R. [1895] P. 56; 43 W.R. 290), 20, 55, v.
Kelly, *re* (L.R. [1895] 1 Q.B. 180; 64 L.J. Q.B. 129; 71 L.T. 843), 20, 57, ii.
Kemp v. Wright (L.R. [1895] 1 Ch. 121; 43 W.R. 213), 20, 34, vii.
Kennedy v. Dodson, 82, vii.
Kent County Council v. Vidler, 73, vii.
Kibble v. Fairthorne, 77, ii.
King and Beesley, *re* (L.R. [1895] 1 Q.B. 189), 20, 33, viii.
Kitto v. Bilbie, 73, v.
Kitts v. Moore (L.R. [1895] 1 Q.B. 253; 64 L.J. Q.B. 152), 20, 32, iii.
Knapp v. Vassall (64 L.J. Ch. 112; 43 W.R. 279), 20, 55, iv.
Knight v. K., 63, iii.
— v. —, 67, ii.
Knox's Trusts, *re*, 84, ii.
LAUGHTON v. GRIFFIN, 68, i.
Laver v. Botham (64 L.J. Q.B. 110), 20, 48, vi.
Lauritzen v. Carr, 65, iv.
Lee v. Cohen, 83, v.
Lemmon v. Webb (L.R. [1895] A.C. 1; 64 L.J. Ch. 205), 20, 47, vii.
Levene, *e. p.*; *re* Hewett, 65, i.
London and General Bank, *re*, 68, vii.
Lovejoy v. Cole (64 L.J. Q.B. 120), 20, 40, ii.
Lysaght v. Coleman (64 L.J. Q.B. 175; 71 L.T. 830), 20, 56, iii.
McDERMOTT v. BOYD, 64, vii.
— v. — (L.R. [1894] 3 Ch. 290; 63 L.J. Ch. 741; 43 W.R. 20), 20, 12, iv.
— *e. p.*; *re* —, 65, ii.
McIlquham v. Taylor (64 L.J. Ch. 296; 43 W.R. 297), 20, 39, i.
Mackintosh v. Pogose, 88, i.
Mandleberg v. Morley, 81, v.
Mansion House Association v. G.W.R., 86, i.
Martin v. Varlow, *re*, 82, vi.
Mason, *e. p.*; *re* Isaacson (71 L.T. 812), 20, 33, vi.
Maund, *e. p.*; *re* M. (L.R. [1895] 1 Q.B. 194; 64 L.J. Q.B. 183; 72 L.T. 58), 20, 83, x.
May v. Lane (64 L.J. Q.B. 236; 71 L.T. 869), 20, 32, v.
Mecca, *the* (L.R. [1895] P. 95; 64 L.J. P. 40; 43 W.R. 209), 20, 55, vii.
Meredyth v. M., 74, vi.
Meux v. City of London Electric Lighting Co., 81, i.
M.R. v. Edmonton Guardians, 82, i.
— v. Silvester, 84, v.
Midland Coal Co., *re* (L.R. [1895] 1 Ch. 267; 64 L.J. Ch. 279; 43 W.R. 244), 20, 37, ii.
Minter v. Kent Land Society, 83, ii.
Moore v. Fulham Vestry, 80, iv.
— v. Hawkins, 83, iv.
Morant v. Wheal Greville Mining Co., 86, iv.

Morley v. Rennoldson, 98, iii.
 "Morocco Bound" Syndicate v. Harris, 70, i.
 Mostyn v. London, 86, iii.

NATIONAL PROVINCIAL BANK AND
 MARRS, *re* (L.R. [1895] 1 Ch. 190;
 64 L.J. Ch. 255), 20, 58, vii.

Nautik, the, 90, i.

Neptune Steam Navigation Co. v.
 Schlater (L.R. [1895] P. 40; 64
 L.J. P. 8), 20, 55, vi.

New v. Burns (64 L.J. Q.B. 104),
 20, 50, iii.

New Travellers' Chambers, *re*, 69, ii.

Newton v. Debenture Holders of
 Anglo-Australian Land Co., 68, iii.

Nichols v. North Metropolitan Rail-
 way Co., 90, vii.

Nordenfeldt, *re* (64 L.J. Q.B. 182),
 20, 84, ii.

Norris v. Birch, 80, ii.

North Western Bank v. Poynter,
 87, vi.

Norton v. Conservative Counties
 Building Society (L.R. [1895] 1
 Q.B. 246; 64 L.J. Q.B. 214; 71
 L.T. 790), 20, 32, iv.

— v. Monckton, 75, iii.

Noyes v. Paterson (43 W.R. 377),
 20, 27, ii.

ODDY, *re*, 84, i.

Official Receiver, *c. p.*, 64, viii.

— *re* Thurlow, 64, v.
 Oliver v. Robins (64 L.J. Ch. 203),
 20, 39, v.; 49, vi.

Onslow, v. M.S. & L.R., 85, ii.

Oriental, the (L.R. [1895] P. 49; 64
 L.J. P. 32), 20, 56, iv.

O'Sullivan v. Thomas, 73, iii.

PATTEN v. SPARKS, 98, i.

Payne v. Wilson, 87, iv.

Perry v. Phosphor Bronze Co., 82, ix.

Peters v. Tauchereau, 88, vii.

Peterson v. Dunn, 88, ii.

Phythian v. Baxendale, 74, i.

Pilbrow v. Shoreditch Vestry, 80, i.
 — v. — (64 L.J. M.C. 29),
 20, 46, ii.

Pilgrim, the, 89, viii.

Pillers v. Edwards, 79, vi.

Plomley v. Richardson (64 L.J. P.C.
 18), 20, 85, v.

Preston Bank v. Allsup (L.R. [1895]
 1 Ch. 141; 64 L.J. Ch. 126; 43
 W.R. 231), 20, 50, viii.

RABBETH v. DONALDSON, 71, i.
 Railway Time Table Publishing Co.,
re, 69, v.

Reddaway v. Banham, 91, iii.

Reg. v. Brown (72 L.T. 22; 43 W.R.
 222), 20, 41, iii.

— v. Chadwick (64 L.J. Q.B. 131;
 43 W.R. 220), 20, 53, iii.

— v. Essex Justices (64 L.J. M.C.
 89; 71 L.T. 832; 43 W.R. 379),
 20, 17, iv.

— v. Huggins, 75, iv.

— v. Kerswill (64 L.J. M.C. 70),
 20, 48, iv.

— v. London Justices, 75, vii.

— v. Marylebone Vestry, 71, vii.

— v. Silverlock (72 L.T. 298), 20,
 8, v.

— v. Tomlinson, 71, iii.

— v. West Riding County Council,
 77, iii.

— v. Williams, 92, ii.

— v. Worton, 73, iv.

Reid v. Wilson (L.R. [1895] 1 Q.B.
 315; 64 L.J. M.C. 60; 71 L.T. 739),
 20, 57, v.

Rendell v. Grundy (64 L.J. Q.B. 135),
 20, 50, iv.

Rhodes v. Moules (L.R. [1895] 1 Ch.
 236; 64 L.J. Ch. 122), 20, 57, iii.

Roberts v. Trench, 83, i.

— v. Plant, 84, iii.

Rooke v. Dawson, 66, vii.

Royal Bank of Scotland v. Tottenham
 (64 L.J. Q.B. 99), 20, 4, ii.

Royle v. Harris, 94, iii.

Rymer v. Stanfield (64 L.J. Ch. 86),
 20, 60, ii.

ST. GEORGE'S LOCAL BOARD v. BALLARD,
 77, iv.

St. Martin's Vestry v. Bird (L.R.
 [1895] 1 Q.B. 423; 71 L.T. 868),
 20, 46, iii.

San Paulo Railway Co. v. Carter,
 86, v.

Sanguinetti v. Stuckey's Bank (L.R.
 [1895] 1 Ch. 176; 64 L.J. Ch.
 181; 71 L.T. 872), 20, 34, iii.

Saunders v. Holborn Board of Works
 (64 L.J. Q.B. 101), 20, 46, iv.

Sawyer v. Goddard, 91, iv.

Scholfeld v. Lord Lonsborough,
 66, iii.

Schuller v. Wood, 79, vii.

Scobie v. Collins (L.R. [1895] 1
 Q.B. 375; 71 L.T. 775), 20, 47, iv.

Sculcoates Union v. Hull Docks Co.
 (64 L.J. M.C. 49), *re*, 48, vii.

Self v. Hove Commissioners, 78, ii.
 Semet's Patent, *re* (L.R. [1895] A.C. 78), 20, 48, v.
 Shackell v. Chorlton, 69, iii.
 Sheather, *goods of*, 68, iv.
 Shenton, v. Smith, 71, v.
 Sheffield Corporation v. Anderson, 78, i.
 Shortridge, *re*, 78, iv.
 Sidebotham v. Holland, 76, ii.
 Singleton v. Ellison, 71, ii.
 Smart v. Watts, 64, ii.
 Smith v. Lister, 79, i.
 ——— v. Wallace, 91, vi.
 South Australia, Bank of, *re* (64 L.J. Ch. 144), 20, 18, i.
 Stafford v. Dyer, 89, i.
 Stevens v. Green, 75, i.
 Stockton Football Club v. Gaston, 82, iv.
 Strachan, *re*, 78, v.
Strathgarry, the, 90, iv.
 Sweet v. S. (64 L.J. Q.B. 108; 43 W.R. 303), 20, 42, v.
 Sweetmeat Automatic Delivery Co. v. Inland Revenue Commissioners, 87, ii.
 Tabor v. Godfrey, 76, v.
 Tarbuck, *e. p.* (72 L.T. 59), 20, 84, v.
 Tarn v. Emmerson, 63, ii.
 Tasker v. T. (64 L.J. P. 36; 71 L.T. 779; 43 W.R. 255), 20, 42, iii.
 Thorne v. Cann (L.R. [1895] A.C. 11; 71 L.T. 852), 20, 47, vi.
 Thorne-George v. Godfrey, 79, v.
 Thursby v. Briercliffe Churchwardens, 82, ii.
 Timberhill (Vicar of) v. Rectors, &c., 72, ii.
 Townend's Contract, *re*, 92, i.
 Trego v. Hunt, 81, iii.
 Trench v. Hamilton, 93, iv.
 Trew v. Perpetual Trustee Co., 93, v.

Troup, *e. p.*; *re* Hawkins, 65, vi.
 Tucket v. Shaw, 68, i.
 Turner v. King, 79, iv.
 Tuticorin Cotton Press Co., *re* (64 L.J. Ch. 198), 20, 86, i.
 Tynwald, *the* (L.R. [1895] P. 142; 64 L.J. P. 1), 20, 56, i.
 Tyrell v. Painton (L.R. [1895] 1 Q.B. 203; 64 L.J. Q.B. 38), 20, 50, ii.
 WALLIS v. BENDY (64 L.J. Ch. 170; 71 L.T. 750; 43 W.R. 345), 20, 55, iii.
Wega, the, 88, iii.
 Wegg-Prosser v. Evans (72 L.T. 8), 20, 43, ii.
 Welby v. Still (72 L.T. 108), 20, 56, viii.
 West Ham Guardians v. Bethnal Green Churchwardens, 81, vi.,
 White v. Furness, 89, ii.
 ——— v. Hay, 91, i.
 ——— v. Mellin, 76, vi.
 ——— and Rubery, *re* (64 L.J. Q.B. 187), 20, 84, vi.
 Whitwham v. Piercy (64 L.J. Ch. 249; 71 L.T. 745), 20, 61, iii.
 Wilkinson v. Peel, 76, iv.
 Williams v. Cartwright (64 L.J. Q.B. 92; 71 L.T. 834), 20, 51, i.
 ——— v. W., 92, vi.
Winestead, the, 88, v.
 Winnipeg Street Railway Co. v. Winnipeg Electric Railway Co. (64 L.J. P.C. 10), 20, 21, i.
 Wirral Highway Board v. Newell, 73, vi.
 Woodroffe v. Moody (64 L.J. Ch. 174; 72 L.T. 190), 20, 81, ii.
 YOUNG v. HOLLOWAY, 94, iv.
 ZELMA GOLD Co. v. HOSKINS, 87, vi.

Quarterly Digest

OF

ALL REPORTED CASES,

IN THE

LAW REPORTS, LAW JOURNAL REPORTS, LAW TIMES
REPORTS, and WEEKLY REPORTER,

FOR FEBRUARY, MARCH, AND APRIL, 1895.

By C. H. LOMAX, M.A., of the Inner Temple,
Barrister-at-Law.

Administration:—

- (i.) **Ch. D.**—*Account Duty*—*Power of Appointment*—*Successive Appointments*.—The donee of a power of appointment over a sum of consols made successive appointments by deed of specific amounts, subject to her life interest, and appointed the residue by will. *Held*, that the account duty, and the costs of administering the fund must be borne by the appointees ratably.—*Tucket v. Shaw*, L.R. [1895] 1 Ch. 843; 64 L.J. Ch. 288; 71 L.T. 873; 43 W.R. 816.
- (ii.) **C. A.**—*Insolvent Estate*—*Claim of Wife*—*Loan for Business Purposes*—*Judicature Act, 1875, s. 10*—*Married Women's Property Act, 1882, s. 3*.—Where a married woman has lent money to her husband for business purposes, her claim to repayment will be postponed to the claims of other creditors in the administration of his estate if insolvent. The rule applies if the estate is solvent at his death, but becomes insolvent if the costs of the administration action are taken into account.—*Tarn v. Emmerson*, 43 W.R. 406.
- (iii.) **Ch. D.**—*Payment of Legacies*—*Realty and Personality*.—Where a testator bequeaths legacies and then devises and bequeaths the residue of his real and personal estate, the legacies are charged upon the real estate, but are payable primarily out of the personality, unless the testator directs that they are to be paid out of the mixed fund, in which case they are payable rateably out of both realty and personality.—*Knight v. Knight*, L.R. [1895] 1 Ch. 499; 64 L.J. Ch. 305.
- (iv.) **P. D.**—*Creditor*.—The Court declined to depart, on the ground of convenience, from the rule that a creditor, applying for a grant, must take a general grant.—*In the goods of Sheather*, 71 L.T. 848.

E

- (i.) **P. D.**—*Lunacy of Administrator—Grant for use of.*—Where a single administrator becomes insane, and a person is appointed under the Lunacy Act, 1890, s. 116, with only specified powers, the Court will make a grant to another of the next-of-kin for the use of such administrator during his lunacy, impounding the original grant.—*In the goods of Cooke*, L.R. [1895] P. 68; 64 L.J. P. 85; 72 L.T. 121.

Adulteration:—

- (ii.) **Q. B. D.**—*Sample—Purchase for Analysis—Admission of Offence—Notification—Sale of Food and Drugs Act, 1875, ss. 13, 14—Margarine Act, 1897, ss. 6, 12.*—It is a condition precedent to a prosecution under the Acts, that the inspector, after purchasing a sample, should notify the seller of his intention to have an analysis made, and that the analysis should be made, although the seller at the time admits an offence against the Acts.—*Smart & Son v. Watts*, L.R. [1895] 1 Q.B. 219; 64 L.J. M.C. 89; 71 L.T. 768; 43 W.R. 379.

Banker:—

- (iii.) **Q. B. D.**—*Letter of Credit—Bills Drawn—Terms of Letter of Credit.*—The defendants addressed a letter of credit to K. and Co., undertaking to open a credit for £5,000 in favour of K. and Co., "to be availed of by drafts on us against produce bought and paid for by you, but not immediately ready for shipment." K. and Co. drew bills on the defendants without having bought produce, and negotiated them with the plaintiffs, who knew the terms of the letter of credit. The defendants declined to accept the bills. *Held*, that they were not liable, as no goods had been "bought and paid for" by K. and Co.—*Chartered Bank of India, Australia, and China v. Macfadyen*, 43 W.R. 397.

Bankruptcy:—

- (iv.) **Q. B. D.**—*Act of—Absenting Himself.*—A judgment debtor, who previous to the judgment had been living in lodgings under an assumed name, removed after the judgment to other lodgings, leaving no address, and not communicating her address to her solicitor. *Held*, that she was "absenting" herself within the meaning of sect. 4, sub-sect. 1 (a), of the Bankruptcy Act, 1883.—*E. p. Jackson*; *in re Alderson*, L.R. [1895] 1 Q.B. 183; 64 L.J. Q.B. 188.
- (v.) **C. A.**—*Adjudication—Adjournment—Discretion.*—On an application under sect. 20 (i) of the Bankruptcy Act, 1883, to adjudicate a debtor bankrupt, the registrar has a discretion, for sufficient reason, to adjourn the application under sect. 105. *Semble*, that the fact that an immediate adjudication would result in injustice to the creditors is a "sufficient reason."—*F. p. Official Receiver*; *in re Lord Thurlow*, 43 W.R. 403.
- (vi.) **Q. B. D.**—*Administration of Deceased's Estate—Costs—Bankruptcy Act, 1883, s. 125.*—The words "testamentary expenses" in the section include the costs of the executrix in a creditor's action for administration, which are payable in full.—*E. p. Clark*; *in re Chapman*, 71 L.T. 778.
- (vii.) **C. A.**—*Annulment—Private Bargain by Creditor.*—Decision of Ch. D. (*see* Vol. 19, p. 114, vii.) reversed.—*McDermott v. Boyd*, 64 L.J. Ch. 13; 71 L.T. 502.
- (viii.) **C. A.**—*Bankruptcy Notice—"Final Judgment"—Bankruptcy Act, 1883, s. 4, sub-s. 1 (g).*—An order made by the Court of Bankruptcy on motion setting aside an assignment of certain of the bankrupt's property, and

directing the assignee to pay the costs of the motion, is not a "final judgment" so as to support a bankruptcy notice against the assignee on his non-payment of the costs.—*E. p. Official Receiver*, L.R. [1895] 1 Q.B. 609; 43 W.R. 305.

- (i.) **Q. B. D.**—*Bankruptcy Notice—Married Woman—Judgment Against—Bankruptcy Act, 1883, s. 4, sub-s. 1 (g)—Bankruptcy Rules, 1886, r. 136; Appendix, Form 6.*—A judgment recovered against a married woman does not, upon the death of her husband, render her personally liable to pay the judgment debt, so as to entitle the judgment creditor to issue a bankruptcy notice to her upon such judgment.—*E. p. Levene; in re Hewett*, L.R. [1895] 1 Q.B. 328; 64 L.J. Q.B. 185; 72 L.T. 60; 43 W.R. 237.
- (ii.) **C. A.**—*Bankruptcy Notice—Judgment—"Final"—Bankruptcy Act, 1883, s. 4, sub-s. 1 (g).*—An interlocutory order was made for the payment of A.'s costs by X. A. brought an action for the taxed costs, and obtained judgment by default. *Held*, that it was a "final judgment" upon which a bankruptcy notice could be issued.—*E. p. McDermott; in re Boyd*, L.R. [1895] 1 Q.B. 611.
- (iii.) **C. A.**—*Notice—Irregularity—No Substantial Injustice.*—In an action by the petitioning creditor against the debtor and five others judgment was recovered against the debtor and three out of the five. In a bankruptcy notice the judgment was stated to have been recovered against all the defendants, their names being given. *Held*, that the notice was good, no substantial injustice being caused by the irregularity.—*E. p. Gibson; in re Low*, 43 W.R. 405.
- (iv.) **Q. B. D.**—*Bill of Lading—Indorsement—Act of Bankruptcy—Title of Trustee—Bankruptcy Act, 1883, ss. 43, 48 (g).*—Plaintiff consigned goods to E. under a bill of lading. E. indorsed the bill to G., his clerk, before obtaining possession of the goods, directing him to sell, and account to the plaintiff. He then assigned his goods for the benefit of creditors, and was subsequently adjudicated bankrupt. On an interpleader issue between the plaintiff and the trustee in bankruptcy the jury found that the property in the goods had passed to E., and that he indorsed the bill because he believed the goods to be the plaintiff's, and not from a desire to prefer him. *Held*, that the transaction was not fraudulent and void, but that the property did not pass to G. as agent for the plaintiff or otherwise, and that the goods were still part of E.'s estate at the time of executing the deed of assignment, and that the trustee was therefore entitled.—*Lauritzen v. Carr*, 72 L.T. 56.
- (v.) **C. A.**—*Hire Agreement—Assignment of.*—Decision of Q. B. D. (*see* Vol. 20, p. 93, vi.) affirmed.—*E. p. Isaacson; in re Mason*, L.R. [1895] 1 Q.B. 388; 43 W.R. 278.
- (vi.) **C. A.**—*Petitioning Creditor's Debt—Judgment obtained by Compromise—Fraud—Bankruptcy Act, 1883, s. 7.*—When a petitioning creditor's debt is founded upon a judgment obtained by the compromise of an action, the Court may reject the debt as not a good petitioning creditor's debt, if after enquiring into the transactions between the parties the Court can see that the compromise, though not fraudulent, was unfair and unreasonable.—*E. p. Troup; in re Hawkins*, L.R. [1895] 1 Q.B. 404; 72 L.T. 41; 43 W.R. 306.
- (vii.) **C. A.**—*Protected Transaction—Charging Order.*—A charging order against a fund in Court belonging to the bankrupt is not "an execution against the goods of a debtor" within sect. 45 of the Bankruptcy Act, 1883, nor a protected transaction within sect. 49.—*Courage v. O'Shea*, L.R. [1895] 1 Ch. 325; 64 L.J. Ch. 263; 71 L.T. 827; 43 L.R. 232.

- (i.) **Q. B. D.**—*Secured Creditor—Valuation of Security.*—In sending in his proof a secured creditor need not state which particular securities he holds against which particular debts, nor separately assess the value of each security, but may value his securities in a lump sum against the total amount of his debt.—*In re Smith and Logan*; *e. p. Fletcher v. Brandon*, 43 W.R. 413.
- (ii.) **C. A.**—*Undue Preference—Suspension of Certificate—Bankruptcy Act, 1890, s. 8, sub-s 3 (i).*—If a bankrupt within three months before the receiving order pays in full a creditor who would probably be entitled to preference in bankruptcy, the payment is an “undue preference,” which makes suspension of his certificate necessary. *Semble*, that the result would be the same even if the creditor would certainly be entitled to preference.—*E. p. Bryant*; *in re Bryant*, L.R. [1895] 1 Q.B. 420; 72 L.T. 133.

Bill of Exchange:—

- (iii.) **C. A.**—*Accommodation Bill—Fraudulent Alteration—Liability of Acceptor.*—Decision of **Q. B. D.** (*see Vol. 20, p. 3, iii.*) affirmed.—*Scholfield v. Lord Londesborough*, L.R. [1895] 1 Q.B. 536; 72 L.T. 46; 43 W.R. 531.

Bill of Sale:—

- (iv.) **Q. B. D.**—*Assignment for Creditors—Registration—Time Limit for Assent—Notice—Bills of Sale Act, 1878, s. 4.*—A deed of assignment is not prevented from falling within the exception in the section above mentioned, by reason only that a time limit is imposed within which creditors must assent in order to gain the benefit of the deed, so long as it provides for notice to them. Such a deed, therefore, does not require registration as a bill of sale.—*Hadley & Sons v. Beedom*, L.R. [1895] 1 Q.B. 646; 64 L.J. Q.B. 240; 43 W.R. 218

Building Society:—

- (v.) **Ch. D.**—*Rule—Construction.*—*Held*, upon the construction of a rule of the defendant society, that notices of withdrawal which by the rule became effective on or before a certain date were entitled to priority over notices received after that date, there being nothing to negative the presumption that charges take effect in order of date.—*Botten v. City and Suburban Permanent Benefit Building Society*, 72 L.T. 87.

Carrier:—

- (vi.) **Q. B. D.**—*Wharfinger—Liability as Common Carriers.*—Wharfingers, who described themselves as wharfingers, lightermen, and carmen, carried goods from their wharf for their wharf customers, but not for strangers, except at arranged prices, and not then unless they considered the business good. *Held*, that they were not common carriers, or liable as such.—*Chattock v. Bellamy*, 64 L.J. Q.B. 250.

Charity:—

- (vii.) **Ch. D.**—*Administration—Scholarship—Action to Obtain—Charity Commissioners—Consent of.*—The foundation deed of a scholarship provided for the award thereof to the qualified candidate who should pass the best examination in certain subjects. The plaintiff alleged that he had obtained the highest marks at the examination, but that the scholarship had not been awarded, and he claimed possession. *Held*, that by presenting himself for examination the plaintiff did nothing which constituted a contract with the trustees, that his claim

involved a partial administration of the trusts, and that the certificate of the Charity Commissioners was necessary for the continuance of the action.—*Rooke v. Dawson*, L.R. [1895] 1 Ch. 480; 64 L.J. Ch. 301; 72 L.T. 248; 43 W.R. 318.

- (i.) **Ch. D.—Endowment—Charity Commissioners.**—Where funds were bequeathed to trustees upon trust to apply and appropriate the same as they in their uncontrolled discretion should think proper for the advancement of education and learning; *held*, that the charity was subject to the general jurisdiction of the Charity Commissioners, and that the trustees must furnish accounts to them.—*In re Gilchrist's Trusts*, L.R. [1895] 1 Ch. 367; 64 L.J. Ch. 298; 71 L.T. 875; 43 W.R. 234.
- (ii.) **Ch. D.—Legacy to Charity Charged on Real Estate in Aid of Personalty**—*Abatement.*—A testator bequeathed to a charity an annuity fund which was made up primarily of personalty, and was only charged on real estate in aid of the personalty. *Held*, that the gift to the charity must abate only in the proportion which the value of the impure personalty bore to that of the pure personalty, and also to the extent to which it was necessary to resort to the proceeds of sale of the real estate in aid of the personalty for payment of the gift.—*Knight v. Knight*, 72 L.T. 221.
- (iii.) **P. C.—Mortmain—Law of Victoria.**—A testator, domiciled in Victoria, bequeathed money to an English corporation for the purchase of land in England for charitable purposes. The gift was valid by the law of the colony. *Held*, that the law of the colony governed the case, and that the gift was good.—*Mayor, &c., of Canterbury v. Wyburn*, L.R. [1895] A.C. 89.

Colonial Law :—

- (iv.) **P. C.—Canada—Arbitration—Appeal—Duty of Court.**—The Canadian Railway Act, 1888, s. 161, sub-s. 2, provides for an appeal to the Court from the award of arbitrators in respect of land taken, and the section directs that the Court shall decide the appeal, if it is a question of fact, upon the evidence taken before the arbitrators, "as in a case of original jurisdiction." *Held*, that the Court was intended to examine both facts and law, and decide as to the justice of the award upon the merits; not that they should entirely disregard the award and the reasoning in support of it.—*Atlantic and North-Western Railway Co. v. Wood*, 72 L.T. 238.
- (v.) **P. C.—Manitoba—Schools.**—Sect. 22 of the Manitoba Act, 1870, is intended to be a substitute for sect. 93 of the British North America Act, 1867, so far as regards Manitoba. Sub-sect. 2 of sect. 22 of the first-mentioned Act extends to the rights of the minority in relation to education acquired by legislation in the province after union with Canada, but does not give the parties aggrieved an appeal to the Governor-General in Council concurrently with the right to resort to the courts of law. An appeal lies to the Governor-General in Council under the sub-section on the ground that the Public Schools Act of 1890 prejudicially affected the rights of the Roman Catholic minority in relation to education by substituting a system of undenominational schools supported out of public moneys for the previously existing denominational schools.—*Brophy v. Attorney-General of Manitoba*, 72 L.T. 163.
- (vi.) **P. C.—New South Wales—Arbitration—Company.**—The arbitration provisions in the Companies Act only apply to voluntary arbitrations to which a company has agreed in writing under seal. Accordingly, an arbitrator under the Arbitration Act, 1892, need not make the declaration required by sect. 113 of the Companies Act.—*Zelma Gold Mining Co. v. Hoskins*, L.R. [1895] A.C. 100; 72 L.T. 32.

- (i.) **P. C.**—*Natal—Speculative Transactions in Shares.*—An association formed for the purpose of speculating in shares, of which the appellant was a member, had dealings with other such associations of which he was not a member, though some of his associates were. *Held*, that such dealings were not necessarily outside the authority of the manager, which authority was not limited to transactions in the open market.—*Laughton v. Griffin*, L.R. [1895] A.C. 104.
- (ii.) **P. C.**—*Victoria—Land Tax—Purchase—Apportionment.*—The respondent had contracted to purchase from the appellant less than the 640 acres, which is the minimum quantity of land liable to land tax. *Held*, that the appellant was not entitled on completion to charge the respondent with the land tax on the land purchased, either as his proportionate part of the tax paid on the entire holding, or as an outgoing contracted to be paid for in respect of his purchase.—*County Estates Co. v. Graves*, L.R. [1895] A.C. 113; 72 L.T. 30.

Company:—

- (iii.) **P. C.**—*Charge upon Uncalled-up Capital.*—A company limited by share, under the Companies Act, 1874, of New South Wales, has power to charge uncalled-up capital, unless such a charge is forbidden by the memorandum or articles. A company was formed (*inter alia*) to receive money "upon the security of any property of the company." *Held*, that these words authorised a charge upon uncalled-up capital. The articles gave power to the directors to call up only a certain portion of the capital without a special resolution. Before the limit was reached debentures were issued purporting to charge the uncalled-up capital. *Held*, that the whole uncalled capital was charged, and not only that which the directors could call up.—*Newton v. Debenture-Holders of the Anglo-Australian Finance and Land Co.*, 43 W.R. 400.
- (iv.) **Ch. D.**—*Reduction of Capital—Cancellation of Shares.*—The capital of a company consisted of first and second preference, and ordinary shares. The preference shares had non-cumulative preferential rights to dividends, and absolute preferential rights as to capital. A large amount of capital having been lost, it was proposed to reduce the capital by cancelling the ordinary and second preference shares. It was proved that it was highly improbable that any dividends could ever be earned for the second preference and ordinary shares. A second preference shareholder opposed the scheme. *Held*, that it ought to be sanctioned.—*In re Floating Dock Co. of St. Thomas*, 43 W.R. 344.
- (v.) **Ch. D.**—*Unregistered Building Society—Winding-up and Vesting Order—Sale by Liquidator.*—The Court has no jurisdiction, under the Companies Act, 1862, s. 199, to make an order to wind up a building society, not registered under the Building Societies Act, 1874, where the society does not consist of seven members, and any such order is void. A liquidator appointed under such an order cannot make a good title to property of the society.—*In re Bowling & Welby's Contract*, 72 L.T. 18; 43 W.R. 216.
- (vi.) **C. A.**—*Winding-up—Costs—Liquidator's Liability.*—An application by certain persons to be struck off the list of contributories was opposed by the liquidator, and was refused with costs; but an appeal against such refusal was allowed with costs above and below. *Held*, that the liquidator was not personally responsible for the costs.—*In re R. Bolton & Co.*, L.R. [1895] 1 Ch. 333; 64 L.J. Ch. 285; 72 L.T. 171.
- (vii.) **Ch. D.**—*Winding-up—Misfeasance—Profits—Auditors—Duties of.*—Profits, in the case of a trading or banking company, are the excess of gains over expenses, as shown by the revenue, as distinguished from

the capital, account. They need not necessarily be in hand. The directors are not paying dividends out of capital if they treat a debt as profit earned, though not received, in the revenue account, though the debt turns out bad. Where auditors report and certify balance-sheets showing profits, when properly prepared balance-sheets would not have shown profits, or if they fail to report that advances have been made without proper security, they are liable for misfeasance in respect of dividends paid upon the basis of such balance-sheets and reports. The auditors should take care that the balance-sheet is drawn in such a form that the shareholders have the necessary information to judge of the propriety of the dividend recommended.—*In re London and General Bank*, 72 L.T. 227.

- (i.) **Ch. D.—Winding-up—Private Company—Debts of—Principal and Agent—Indemnity.**—Where the owner of a business has, to enable himself to trade without risk, converted his business into a limited "private" company, the only shareholders being his nominees, the Court will regard such company as the agent of the founder in respect of the debts contracted by it under his direction, and will cause him to indemnify the company against the same in the event of a winding-up.—*Broderip v. A. Salomon & Co.*, 72 L.T. 261.
- (ii.) **Ch. D.—Winding-up—Public Examination—Companies (Winding-up) Act, 1890, s. 8.**—Where the Court has jurisdiction to make, and has made, an order for a public examination, the order will not be discharged on the ground that fraud is not sufficiently shewn by the Official Receiver's report on which the order is based. And where such report is made in good faith, the Court will not allow evidence to be adduced to rebut the charge of fraud thereby made; and will not take the report off the file, or remit it to the Official Receiver in order that other facts, relied on by the person to be examined, may be stated therein.—*In re New Travellers' Chambers*, L.R. [1895] 1 Ch. 395; 64 L.J. Ch. 817; 72 L.T. 89; 43 W.R. 282.
- (iii.) **Ch. D.—Winding-up—Rent—Right of Landlord.**—Under an agreement in 1892, A. let to a limited company a shop for three years at a yearly rent, payable quarterly, "two quarters' rent to be always due and payable in advance if required." The company went into voluntary liquidation on December 20th, 1894, but the liquidator remained in possession for the purposes of the winding-up. A. demanded payment of the rent due on December 25th, and of the next two quarters in advance. *Held*, that the rent must be apportioned; that A. was entitled to be paid in full the rent from December 20th, for so much of the next two quarters as the liquidator was in possession for the purposes of the winding-up, but that A. was only entitled to prove for the rent up to December 20th, and for the remainder of the next two quarters.—*Shackell and Co. v. Chorlton and Sons*, L.R. [1895] 1 Ch. 378; 72 L.T. 188; 43 W.R. 394.
- (iv.) **C. A.—Winding-up—Supervision Order—Petitioner's Debt.**—Decision of Ch. D. (*see* Vol. 20, p. 38, i) affirmed.—*In re Bank of South Australia*, 72 L.T. 273; 43 W.R. 359.
- (v.) **C. A.—Winding-up—Shares Issued at a Discount.**—The articles of a company provided that in case of a winding-up, the surplus assets should be distributed so that the losses should be borne by the members in proportion to the capital paid up, or which ought to have been paid up, on the shares held by them respectively at the commencement of the winding-up. "But this clause is to be without prejudice to the rights of the holders of shares issued upon special conditions." *Held*, that notwithstanding the above proviso, the holders of shares issued at a discount must, for the purpose of

adjusting the rights of contributories, *inter se*, pay up their shares in full.—*In re Railway Time Table Publishing Co.*, L.R. [1895] 1 Ch. 255 64 L.J. Ch. 177.

Copyright:—

- (i.) **Ch. D.**—*Dramatic Work—Representation—English Proprietor—Foreign Country—Infringement—Dramatic Copyright Act, 1883, s. 1—Berne Convention Acts, 2, 9.*—The Court cannot, at the instance of the English proprietor of the performing right of a drama by an English author, restrain a threatened infringement by a British subject in any foreign country comprised in the International Copyright Union. The English proprietor enjoys in any country of the Union the rights which the law of that country gives to natives thereof, and can, therefore, take proceedings in the Courts of that country.—*Morocco Bound" Syndicate v. Harris*, L.R. [1895] 1 Ch. 534; 43 W.R. 393.
- (ii.) **H. L.**—*Infringement—Picture—Copy of Reproduction.*—Decision of C. A. (*see* Vol. 20, p. 7, vi.) affirmed.—*Hanfstaengl v. Baines*, L.R. [1895] A.C. 20; 64 L.J. Ch. 81; 72 L.T. 1.
- (iii.) **C. A.**—*International—Registration—Foreign Picture—First Produced—International Copyright Act, 1886, ss. 2 (3), 11.*—The plaintiff need not register his copyright in this country in order to maintain an action for infringement of his copyright in a foreign picture. A picture is "first produced" in the country where it is first published.—*Hanfstaengl v. American Tobacco Co.*, L.R. [1895] 1 Q.B. 347; 71 L.T. 864; 43 W.R. 261.
- (iv.) **Ch. D.**—*Registration—Coloured Supplement to Periodical—Literary Copyright Act, 1842—Fine Arts Copyright Act, 1862.*—Where a coloured supplement is issued, but not physically connected, with a periodical, registration of the periodical under the Act of 1842 will protect the supplement, though not registered under the Act of 1862, if there is clear evidence that the supplement is a part of the periodical.—*Comyns v. Hyde*, 72 L.T. 250; 43 W.R. 266.
- (v.) **Ch. D.**—*Sale of Blocks for Personal Use—Unassignable Licence—Verbal—Copyright Act, 1842, s. 15.*—The plaintiffs were registered owners of books containing illustrations of carriages, and they supplied copies of the illustrations to customers for advertising purposes. They sold to L. electro blocks of the drawings to enable him to print the illustrations himself. There was no written agreement or licence. L. allowed the defendants to use the blocks. *Held*, that the licence to L. was unassignable, and that the defendants could be restrained. *Seemle*, that L. could not have been restrained from using the blocks, though he had no written licence.—*Cooper v. Stephens*, L.R. [1895] 1 Ch. 567

County Court:—

- (vi.) **P. D.**—*Appeal—Admiralty Action—Amendment—County Courts—Admiralty Jurisdiction Act, 1868, ss. 26, 31—County Courts Act, 1888, ss. 87, 120.*—There is a right of appeal by leave from a county court in an interlocutory matter, although the amount is under £50. A county court judge may amend a claim in an action of collision, after the question of liability has been decided, and before reference.—*The Alert*, 72 L.T. 124.
- (vii.) **Q. B. D.**—*Jurisdiction—Stay of Execution—County Courts Act, 1888, ss. 105, 153.*—A county court judge has no jurisdiction to grant a stay of execution for more than fourteen days after the date of the judgment in cases of judgments for over £20, merely on the ground of inability to pay the debt.—*Attenborough v. Henschel*, 64 L.J. Q.B. 255; 72 L.T. 192; 43 W.R. 288.

Covenant :—

- (i.) **C. A.**—*Separation Deed between Persons not Married—Resumption of Cohabitation.*—A. and R. had cohabited as man and wife. They agreed to separate, and A. covenanted to pay R. an annuity for life. They afterwards cohabited again till A.'s death. *Held*, that the covenant to pay the annuity was indefeasible, and that R. could claim the annuity against A.'s estate.—*Rabbeth v. Donaldson*, L.R. [1895] 1 Ch. 455; 72 L.T. 178; 43 W.R. 824.

Criminal Law :—

- (ii.) **Q. B. D.**—*Brothel-Keeping—Criminal Law Amendment Act, 1885, s. 13, sub-s. 1.*—A woman occupied a house to which men resorted to commit fornication with her. No other woman lived in the house, or went there for purposes of prostitution. *Held*, that she had not committed the offence of "keeping a brothel."—*Singleton v. Ellison*, L.R. [1895] 1 Q.B. 607; 72 L.T. 236.
- (iii.) **C. C. R.**—*Demand of Money—"Menaces"—Larceny Act, 1861, s. 44.*—The word "menaces" in the section above mentioned, is not limited to threats of violence or injury to person or property, but includes threats of accusations of misconduct not amounting to crime. It is a question for the jury whether the threats used are such as would reasonably operate to coerce an ordinary person.—*Reg. v. Tomlinson*, 64 L.J. M.C. 97 72 L.T. 155.

Crown :—

- (iv.) **P. C.**—*Action of Ejectment by—Defence—Specific Performance.*—In an action of ejectment by the Crown any equitable defence may be set up which would have availed against a private plaintiff. Judgment held to have been rightly entered for the defendant, when a concluded contract with the Crown was proved entitling him to the issue of a grant in respect of the land in question.—*Attorney-General for Trinidad, v. Bourne*, L.R. [1895] A.C. 88.

Crown Servants :—

- (v.) **P. C.**—*Colonial Government—Tenure of Office—Appeal by Special Leave—Costs.*—Servants of the Crown hold their offices at pleasure, and are not entitled to a legal remedy for unjust dismissal. Servants of a Colonial Government are in the same position. The Colonial Office "Regulations" do not form part of their contract of service. Where the sum in dispute is below the appealable amount, but special leave to appeal is given on account of the importance of the question in dispute, the appellant will be put under an obligation to pay the costs in any event.—*Shenton v. Smith*, 72 L.T. 190.

Deed :—

- (vi.) **C. A.**—*Construction—General Words—Ejusdem Generis.*—A husband executed a post-nuptial settlement of a house and stables, and assigned to the trustees all household furniture, &c., "and other goods, chattels, and effects, in or upon, or belonging to" the premises. After his death the wife claimed the horses, carriages, and harness. *Held*, that the general words covered these articles, and were not to be restricted to things *ejusdem generis*.—*Anderson v. Anderson*, 43 W.R. 322.

Ecclesiastical Law :—

- (vii.) **C. A.**—*Church Rates—Compulsory—Abolition—Private or Local Act—Burial Fees—Compulsory Church Rates Abolition Act, 1868, s. 5—Burial*

Act, 1852, s. 36.—The “contract” or “consideration” alluded to in the first-mentioned section must appear in or from the construction of the private or local Act which authorises the levying of a church rate. The vestrymen were authorised by a private Act to build a new parish church and provide a cemetery, and receive fees for burial, and apply them, among other purposes, to the repair of the church. *Held*, that the burial fees payable to the vestrymen under the private Act were payable in the burial ground provided by the burial board of the parish, and were payable by the burial board to the vestrymen for the purpose of repairing the parish church.—*Reg. v. Vestry of Marylebone*, 72 L.T. 11.

- (i.) **Ch. D.—Glebe—Mines**—18 *Eliz.*, c. 10 & 20; 14 *Eliz.*, c. 11 & 14; 5 & 6 *Vict.*, c. 108, ss. 6, 20; 21 & 22 *Vict.*, c. 57, ss. 1, 2, 10.—An incumbent cannot lawfully work, or authorise a tenant to work, mines in the glebe which have been illegally opened. The Ecclesiastical Commissioners can maintain an action to restrain the working of mines in glebe land otherwise than by a lease sanctioned by themselves. A rector illegally opened mines in his glebe in 1850. In 1885 his successor agreed, subject to the consent of the Commissioners being obtained, to lease the mines at royalties which for some years were received by him and paid to the Commissioners, who repeatedly pointed out that a lease with their consent ought to be applied for. In 1894 the tenant applied for a lease which was refused, *bonâ fide*, and for adequate reasons. *Held*, that the Commissioners were entitled to restrain the further working of the mines.—*Ecclesiastical Commissioners v. Wodehouse*, L.R. [1895] 1 Ch. 552; 72 L.T. 257; 43 W.R. 394.
- (ii.) **Consistory Court of Norwich.—Faculty—Rood Loft—Figures—Screen—Gates.**—A faculty was refused for a rood loft over a chancel screen, and for figures on a beam above the loft. A faculty was granted for a chancel screen with gates, for screens across the aisles with gates, and for choir-stalls, evidence being given that the property in the chancel and aisles required protection.—*Vicar of St. John the Baptist, Timberhill v. Rectors and Parishioners*, L.R. [1895] P. 71.

Estoppel:—

- (iii.) **C. A.—Attornment—Bailee—Warehouseman—Trover—Measure of Damages.**—The owner of goods at a warehouse was induced by the fraud of F. to transfer them to his order. F. then sold them to an innocent purchaser, who before paying for them obtained a statement from the warehouseman that he held them to the order of F. On discovery of the fraud delivery of the goods was refused. *Held*, that the warehouseman, having attorned to the purchaser, was estopped from impeaching his title, that the refusal to deliver was a conversion, and that the measure of damages was the market value of the goods at the date of the refusal.—*Henderson & Co. v. Williams*, L.R. [1895] 1 Q.B. 521; 72 L.T. 98; 43 W.R. 274

Evidence:—

- (iv.) **Q. B. D.—Admission—Separable Statements.**—It was sought to charge W. as a member of a firm to which goods had been supplied. The only evidence of his having been a member at any time was a letter written by him to a third person prior to the supply of the goods, in which he stated that he had ceased to be a partner some time previously. *Held*, that there was evidence to go to the jury that he was a member at the time the goods were supplied.—*Brown v. Wren Brothers*, L.R. [1895] 1 Q.B. 390; 64 L.J. Q.B. 119; 72 L.T. 109; 43 W.R. 351.

Fishery :—

- (i.) **Q. B. D.**—*Definition of District—Tributary.*—A fishery district was defined as including “the river S. and all its tributaries.” A brook ran into the C., which ran into the V., which ran into the S. *Held*, that the brook was a tributary of the S.—*Evans v. Owen*, L.R. [1895] 1 Q.B. 237; 64 L.J. M.C. 59; 72 L.T. 54; 43 W.R. 237.

Friendly Society :—

- (ii.) **Ch. D.**—*Trusts Exhausted—Surplus Funds—Resulting Trust.*—A society was formed to provide annuities for the widows of its ordinary members. The annuity fund was formed by subscriptions of both ordinary and honorary members, but the honorary members did not share in the benefits. *Held*, that it was not a charity. The members and annuitants were all dead and there was a balance of the annuity fund unexpended. *Held*, that there was a resulting trust for the ordinary members from time to time or their representatives, and that the difficulty and expense of finding the parties entitled did not entitle the Crown to claim the fund as *bona vacantia*.—*Cunnack v. Edwards*, L.R. [1895] 1 Ch. 489; 43 W.R. 325.

Gaming :—

- (iii.) **Q. B. D.**—*Stakeholder—Revocation of Authority—Gaming Act, 1892, s. 1.*—The plaintiff and H. each deposited £5 with the defendant, to be paid to the winner of a race between them. H. won, and the plaintiff revoked his authority. The money was paid to H. *Held*, that the £5 was not a “sum of money paid” by the plaintiff within the meaning of the Act, and that the plaintiff was entitled to recover.—*O’Sullivan v. Thomas*, 72 L.T. 285; 43 W.R. 269.
- (iv.) **Q. B. D.**—*Using Place for Betting—Evidence.*—On the trial of an indictment charging the defendant with using the bar of a public-house for the purpose of betting with persons resorting thereto, it was proved that he habitually went to the house, and that a number of persons resorted thereto, and having written the names of horses upon slips of paper and wrapped up money therein, went outside with the defendant, and handed him the packets. *Held*, that there was evidence for the jury upon the charge.—*Reg. v. Worton*, L.R. [1895] 1 Q.B. 214; 64 L.J. M.C. 74; 72 L.T. 29.
- (v.) **Q. B. D.**—*Delivery or Transfer—Sale—Pledge—Factors Act, 1889, s. 9.*—A person in possession of a gas engine under a hiring agreement, assigned all his stock, machinery, &c., to a trustee for creditors. The trustee took possession of the gas engine. *Held*, that it did not pass to him by the assignment, and that there was no “transfer” or “delivery.”—*Kitto v. Bilbie, Hobson, & Co.*, 72 L.T. 266.

Highway :—

- (vi.) **Q. B. D.**—*Extraordinary Expenses—Surveyor’s Certificate—Highways, &c., Amendment Act, 1878, s. 23.*—A surveyor’s certificate may include more highways than one. Therefore where a certificate was given relating to several highways, and a second was given relating to one of them only, including expenses incurred both before and after the first certificate, *held*, that the first certificate was good, and that proceedings to recover the expenses named therein ought to be commenced within six months from its date.—*Wirral Highway Board v. Newell*, 43 W.R. 328.
- (vii.) **C. A.**—*Extraordinary Traffic—Highways, &c., Act, 1878, s. 23.*—X. contracted to deliver ballast for a railway, and agreed with owners of

traction engines for the haulage thereof from his wharf. X. exercised no control over the user of the engines, the weights carried, or the routes followed. The traffic so caused was extraordinary, and the road was damaged. *Held*, that X. was the person by whose order such traffic had been conducted, and was liable for the expenses of repairing the damage.—*Kent County Council v. Vidler*, L.R. [1895] 1 Q.B. 448; 64 L.J. M.C. 177; 72 L.T. 77; 43 W.R. 273.

- (i.) **Q. B. D.**—*Horse Left Unattended—Penalty—Highway Act, 1835, s. 78.*—Where a person in charge of any carriage passing upon a highway, negligently or wilfully leaves it so that he ceases to have the direction of the horses drawing the same, he is liable, upon conviction, to a fine not exceeding £5; and the fact that the carriage was standing still during his absence, and did not in fact cause any obstruction, is no defence.—*Phythian v. Bazendale*, 43 W.R. 412.
- (ii.) **Q. B. D.**—*Subsidence—Railway—Obstruction.*—A railway was constructed which crossed an existing highway on the level. The road subsided through the working of the defendants, but its surface was not injured. The railway company banked up their line to maintain its level, and thereby made the road impassable. *Held*, that the obstruction was not caused by the defendants, but by the railway company.—*A.-G. v. Conduit Colliery Co.*, L.R. [1895] 1 Q.B. 301; 64 L.J. Q.B. 207; 71 L.T. 771; 43 W.R. 366.

Husband and Wife:—

- (iii.) **P. D.**—*Divorce—Cruelty—Deed of Separation.*—Petition by a wife for divorce on the ground of cruelty and adultery, the only acts of physical cruelty having been long condoned. *Held*, that wilfully depriving her of her proper position in the household, neglecting her, degrading her to the level of a servant, and compelling her to do menial work, were acts of cruelty which would support the petition; and that the fact that the parties had lived apart under a deed of separation was no bar.—*Aubourg v. Aubourg*, 72 L.T. 295.
- (iv.) **P. D.**—*Divorce—Collusion.*—Collusion between the parties is a sufficient ground for rescinding the decree, even if the facts relating to the collusive arrangement are before the Court at the hearing. Where the petitioner has indisputable ground for divorce, and his collusive arrangement with his adulterous wife was for the benefit of their child, the decree will still be rescinded on the intervention of the Queen's Proctor.—*Churchward v. Churchward*, L.R. [1895] P. 7; 64 L.J. P. 18; 71 L.T. 782; 43 W.R. 380.
- (v.) **P. D.**—*Divorce—Custody of Child.*—Upon summons by the father as to the custody *pendente lite*, of the eldest child, a girl over sixteen years of age, the Judge directed that she should remain in the custody of the mother.—*B. v. B.*, 72 L.T. 268.
- (vi.) **P. D.**—*Divorce—Variation of Settlement.*—A settlement made by the petitioner on his marriage limited property after his death to his sons the issue of the marriage, then to sons of any subsequent marriage, then to the petitioner's brother and his sons, then to the petitioner's daughters, with ultimate remainder to the petitioner. There was no issue of the marriage, and the brother had died without issue. The marriage was dissolved. *Held*, that an order might be made for the re-conveyance of the property to the petitioner for his own use.—*Meredyth v. Meredyth*, L.R. [1895] P. 92; 43 W.R. 304.
- (vii.) **P. D.**—*Nullity of Marriage—Duress.*—A man after paying attentions to a girl of sixteen, threatened to blow out her brains with a pistol, which he produced, unless she consented to marry him, which she did.

Shortly after he met her and took her to a registry office, saying that they were going to see his mother. During the marriage ceremony she fainted, and afterwards got away. He never asserted any marital rights. The Court pronounced the marriage null and void.—*Bartlett v. Rice*, 72 L.T. 122.

Incumbrance :—

- (i.) **Ch. D.—Priority—Fund in Court—Stop Order.**—A fund in Court is in the custody of the Court for the purposes of the suit, and not for any other purpose, such as the receipt of notice of an incumbrance on the contingent reversionary interest of a beneficiary under the will to administer which the suit is instituted. An earlier incumbrancer, who had alone given notice to the legal personal representative of such beneficiary, *held*, to have priority over a later incumbrancer whose stop order was obtained before that of the first incumbrancer, there being no evidence of assent by the legal personal representative to the bequest of residuary estate contained in his will, and no application by such personal representative for payment out of the share of the beneficiary.—*Stevens v. Green*; *Green v. Knight*, 72 L.T. 83.

Insurance :—

- (ii.) **C. A.—Life—Proposal—Statements—Warranty—Condition Precedent.**—In his proposal to an insurance company the assured had made certain statements as to his health and previous applications for insurance, and had agreed that these statements were by him "warranted to be true, and were offered to the company as a consideration of the contract." A policy was issued which made the application part of the contract. The statements in the proposal were not true. *Held*, that their truth was a condition precedent, and that the company was not liable on the policy.—*Hambrough v. The Mutual Life Insurance Co. of New York*, 72 L.T. 140.

Justices :—

- (iii.) **Q. B. D.—Committal Warrant—Wrongful Arrest—Damages.**—The plaintiff was arrested under a committal warrant signed and issued by the defendant, a justice of the peace, for non-payment of a debt made up of a sum alleged to be due from him to the local sanitary authority under an order of quarter sessions, and of the costs awarded. *Held*, that the committal warrant was bad, and that the plaintiff was entitled to recover from the defendant, as special damages, the amount paid by him to obtain his release.—*Norton v. Monckton*, 43 W.R. 350.
- (iv.) **Q. B. D.—Disqualification—Bias.**—An unqualified pilot was convicted by the justices of continuing in charge of a ship after a qualified pilot had offered to take charge of her. M., one of the justices, was a qualified pilot, but was in the exclusive employment of one firm, and did not compete with the other pilots. *Held*, that M. had an interest in the conviction, and that it must be quashed.—*Reg. v. Huggins*, L.R. [1896] 1 Q.B. 563; 72 L.T. 193; 43 W.R. 329.

Landlord and Tenant :—

- (v.) **Q. B. D.—Agricultural Holdings Act, 1883, ss. 11, 20—Award—Arbitrators—Appointment of.**—In a reference under the Act for compensation for improvements, the registrar of the county court has no jurisdiction to appoint a referee for one of the parties without his actual consent. Failing such consent the power to appoint a referee for one party upon the application of the other is exercisable by the Judge only, and an award stating that one of the referees was appointed

by the registrar without stating that the consent of the parties was given, is bad on the face of it. In a reference under the Act the referees have no jurisdiction to order a party to pay costs as between solicitor and client.—*In re Griffiths and Morris*, 72 L.T. 290.

- (i.) **C. A.**—*Notice of Determination of Lease*.—Decision of Q. B. D. (see Vol. 20, p. 43, vi.) affirmed.—*Bury v. Thompson*, 72 L.T. 187 43 W.R. 338.
- (ii.) **C. A.**—*Yearly Tenancy—Commencement of—Notice to Quit*.—H. became yearly tenant of S. under an agreement dated the 19th of May, 1890, such yearly tenancy “commencing on the 19th day of May instant.” The rent was to be paid on the usual quarter days. *Held*, that the tenancy commenced on the 19th of May, and that a notice to quit “on the 19th of May next” given on the 17th of November was a good notice. *Held*, that a notice to quit on the 18th of May would have been equally good, the tenancy determining at midnight on the 18th.—*Sidebotham v. Holland*, L.R. [1895] 1 Q.B. 378; 64 L.J. Q.B. 200; 72 L.T. 62; 43 W.R. 228.
- (iii.) **Q. B. D.**—*Notice to Quit—Sufficiency*.—On January 11th, 1892, a tenant wrote saying that he wished to terminate his tenancy, and asking when his tenancy would expire. The reply was that notice must be given to terminate on the 1st of July in any year, and that “you therefore hold the rooms till July, 1893.” *Held*, that a good notice had been given and accepted, and that the tenancy terminated on the date mentioned.—*General Assurance Co. v. Worsley*, 62 L.J. Q.B. 253.
- (iv.) **Q. B. D.**—*Distress—8 Anne, c. 14, ss. 6, 7*.—The right to distrain after the expiration of a tenancy does not apply when the tenant remains in possession of part of the premises under a new tenancy created by agreement.—*Wilkinson v. Peel*, L.R. [1895] 1 Q.B. 516; 64 L.J. Q.B. 178; 72 L.T. 151; 43 W.R. 302.
- (v.) **Q. B. D.**—*Encroachment of Tenant—Effect of—Limitations*.—A tenant under a lease for years encroached upon and occupied for more than twelve years a strip of land adjoining his holding. *Held*, that the landlord could not eject him, but that he must be deemed to have occupied it as part of his holding, and was entitled to occupy it for the rest of the term.—*Tabor v. Godfrey*, 64 L.J. Q.B. 245.

Libel:—

- (vi.) **H. L.**—*Trade—Rival Traders—Advertisement*.—Decision of C. A. (see Vol. 19, p. 127, v.) reversed.—*White v. Mellin*, 64 L.J. Ch. 308; 43 W.R. 353.

Licensing:—

- (vii.) **C. A. & Q. B. D.**—*Appeal—Quarter Sessions—Costs*.—A licensing appeal having been heard and determined at quarter sessions, the justices refused to make an order under 9 Geo. 4, c. 61, s. 29, that the unsuccessful appellant should pay the costs. The question of costs had been fully argued. *Held*, that as they had judicially decided the question, a mandamus to hear and determine the question of costs ought not to be issued.—*Reg. v. London Justices*, L.R. [1895] 1 Q.B. 616; 64 L.J. M.C. 100; 72 L.T. 211; 43 W.R. 287.
- (viii.) **Q. B. D.**—*Enlargement of Premises—“New Premises”—Discretion of Justices*.—A. held a licence for a beerhouse existing before 1869. He enlarged his house, so that the new bar stood on the site of a strip of garden. The justices convicted him of selling on unlicensed premises. *Held*, that the conviction was wrong. He applied for a renewal of his licence, which was refused. *Held*, that it was not open to the justices

to treat the premises as other than the old premises improved, and that they could not refuse a renewal of the licence.—*Deer v. Bell*, 64 L.J. M.C. 85; 43 W.R. 286.

- (i.) **Q. B. D.**—*Refreshment House in Wales—Hours of Closing.*—The hours at which refreshment houses in Wales must be closed are regulated by the Licensing Act, 1874, and not by the Sunday Closing Act, 1881, s. 1. —*Berni v. Thorney*, 43 W.R. 411.

Limitations :—

- (ii.) **Ch. D.**—*Mortgage—Priorities.*—A. mortgaged premises to a building society, and afterwards in 1874 gave a mortgage in the form of a first mortgage to P., to secure a sum lent out of funds held by P. as trustee for A.'s wife and children. A. afterwards gave an equitable mortgage to a bank. The building society's mortgage was paid off, and the mortgage deed returned to A. with the statutory receipt. X. paid off the bank, and received from them the title deeds, and from A. a deed purporting to be a first mortgage. P. died, and his executor conveyed the property under his mortgage to the *cestuis que* trust, but it appeared from the recitals that no principal and interest had been paid thereunder, and it was shown that the mortgagee's title had never been acknowledged. A. was in possession throughout. *Held*, that as the mortgagor had been in possession, P., or those claiming under him, could at any time have brought a foreclosure action, notwithstanding the prior legal mortgage, and that such action would have been an action to recover land. *Held*, therefore, that the statutory period having elapsed, the mortgagee's title was extinguished, and could not be revived, and that upon such extinguishment the legal estate vested in the mortgagor and passed from him to the plaintiff.—*Kibble v. Fairthorne*, L.R. [1895] 1 Ch. 219; 64 L.J. Ch. 184; 71 L.T. 755; 43 W.R. 327.

Local Government :—

- (iii.) **Q. B. D.**—*"Aided Police Force"*—*County Council Contributions—Police Act, 1890, s. 25—Local Government Act, 1888, s. 24 (j).*—Where for any special emergency constables from another police force are added to a local police force, they are deemed to be a part of such force for the purposes of their pay; and the county council must contribute half of such pay.—*Reg. v. West Riding County Council*, 64 L.J. M.C. 95; 43 W.R. 386.
- (iv.) **C. A.**—*New Street—Construction of.*—The defendant owned a strip of land on one side of a lane in an urban district. The land led from a high road and ended in a *cul-de-sac*, and on the other side were houses which had been built many years. The defendant built three houses on his land facing the high road, and having access solely therefrom. The side wall of one of the houses abutted on the lane, and the garden wall extended 80 feet down the lane. *Held*, that this did not constitute the lane a new street so as to be subject to the bye-laws of the sanitary authority under the Public Health Act, 1875, sect. 157.—*St. George's Local Board v. Ballard*, 43 W.R. 409.
- (v.) **Q. B. D.**—*Private Street Works—Apportionment of Expenses.*—Where proposed works under the Private Street Works Act, 1892, consist of a roadway in a new street, and a footpath on one side, there being no houses on the other side, the whole of the expenses are to be apportioned, under sect. 10, amongst the owners of premises abutting on both sides of the street.—*Great Clacton Local Board v. Young & Sons*, L.R. [1895] 1 Q.B. 395; 71 L.T. 877; 43 W.R. 219.

- (i.) **C. A.**—*Street Works—Objection by Frontager—Private Street Works Act, 1892, ss. 6, 7, 8—Sheffield Corporation Act, 1890, ss. 52, 53, 54.*—On hearing an objection by a frontager to a private street work under the Sheffield Act, and, *semble*, under the Public Act, a court of summary jurisdiction, in determining whether the proposed work, as, for instance, sewerage, is unreasonable, may consider the existing state of the drainage of the houses in the street.—*Sheffield Corporation v. Anderson*, 64 L.J. M.C. 44; 72 L.T. 242.
- (ii.) **Q. B. D.**—*Sewer—Repair—Liability—Public Health Acts, 1875, ss. 4, 15, 41; 1890, ss. 3, 19.*—The defendants served notice on the plaintiff to abate a nuisance caused by his drain. On opening the ground the drain was found to serve the next house as well as the plaintiff's. The plaintiff did the work and sought to recover the expenses from the defendants. *Held*, that the defendants were not liable to execute the repairs, and that the notice could not be taken to imply a request to the plaintiff to do the work on their behalf.—*Self v. Hove Commissioners*, 64 L.J. Q.B. 217; 72 L.T. 234; 43 W.R. 300.

Lunatic:—

- (iii.) **C. A.**—*Jurisdiction—Settled Land—Bill in Parliament—Opposition—Costs of.*—There is jurisdiction in Lunacy to order the costs and expenses of an unsuccessful opposition to a Bill in Parliament affecting the estate of a lunatic tenant for life of settled land, to be paid out of the corpus of the settled property.—*In re Blake*, 72 L.T. 280.
- (iv.) **C. A.**—*Power of Appointment of New Trustees—Vesting Order.*—A lunatic had a power to appoint new trustees. The master ordered that A. should exercise the power by appointing X. and Y., and that the right to call for a transfer of consols part of the trust funds should vest in them. *Held*, that the order was right, but that in similar cases the Bank of England should have some certificate by the master of the execution of the deed.—*In re Shortridge*, L.R. [1895] 1 Ch. 278; 64 L.J. Ch. 191; 71 L.T. 799; 43 W.R. 257.
- (v.) **C. A.**—*Practice—Inspection of Documents.*—No one may inspect documents in the custody of the Court without an order of one of the masters or a judge in lunacy. An order will be made for the inspection of such documents, except reports to the Court from its medical advisers, by anyone who can shew that he wants it for a reasonable purpose, provided the lunatic is not injured. Privilege is no bar to inspection in lunacy. Inspection will not be allowed to a litigating party who applies for it, before trial, to find out his adversary's case. An order for inquiry into the sanity of an alleged lunatic was made on the petition of A. Pending inquiry the alleged lunatic died, leaving a will in favour of B. A. disputed probate of the will, alleging insanity and undue influence. B. applied for leave to inspect the petition and affidavits in support, to ascertain what allegations of insanity would be made in the probate action. *Held*, that the inspection ought not to be allowed.—*In re Strachan*, L.R. [1895] 1 Ch. 439; 72 L.T. 175; 43 W.R. 869.

Maintenance:—

- (vi.) **Q. B. D.**—*Criminal Proceedings—Indemnity for Costs—Legality of.*—The doctrine of maintenance is confined to civil actions, and in criminal proceedings it is not illegal; therefore when a person gives a guarantee agreeing to indemnify a solicitor in respect of the costs of criminal proceedings to be taken against another person, an action can be maintained on the guarantee.—*Grant v. Thompson*, 72 L.T. 264.

Manor :—

- (i.) **Q. B. D.—Village Green—Title—Evidence—Manor Map—Tithe Map—Encroachments.**—Upon the question whether a general right to the waste of a manor has arisen in which the inhabitants of a township and tenants of the manor have an interest, a manor map, produced from the custody of the lord, made by a surveyor now dead, but proved by the evidence of a living witness to have been competent and acquainted with the district, and used for rating purposes, is receivable in evidence. Upon a similar question a tithe map is receivable. Where a common was not dealt with by an inclosure award made in 1873 there is no inference that it has ceased to be waste. Acts of ownership by persons who have successfully encroached upon small portions of a common do not give rise to the inference that they can make a title to the waste surrounding their encroachments.—*Smith v. Lister*, 64 L.J. Q.B. 154; 72 L.T. 20.

Master and Servant :—

- (ii.) **Q. B. D.—Liability of Master—Scope of Authority.**—The defendants' omnibus was stopped by the police because the driver was drunk. X. offered to drive it back to the yard, and the driver and conductor accepted the offer. X. drove carelessly and injured the plaintiff. *Held*, that there was evidence of such an emergency as authorised the defendants' servants to employ X., and that the defendants were liable for X.'s carelessness.—*Gwilliam v. Twist*, L.R. [1895] 1 Q.B. 557; 72 L.T. 115; 43 W.R. 398.
- (iii.) **Q. B. D.—Shop Hours Act, 1892, ss. 3, 4, 5.**—An employer cannot be fined for employing a young person in a shop where the notice required by sect. 4 is not exhibited.—*Hammond v. Pulsford*, L.R. [1895] 1 Q.B. 223; 64 L.J. M.C. 63; 71 L.T. 767; 43 W.R. 236.

Married Woman :—

- (iv.) **Ch. D.—Gift for Life for Separate—Remainder to Executors, &c.—Effect of—Married Women's Property Act, 1882.**—When property is held upon trust for a woman married since the Act above mentioned, for life for her separate use, and in default of the exercise by her of a general power of appointment, then for her executors, administrators, or assigns, she will, on releasing the power, become absolutely entitled.—*Turner v. King*, L.R. [1895] 1 Ch. 361; 64 L.J. Ch. 252; 71 L.T. 875; 43 W.R. 217.
- (v.) **C. A.—Restraint upon Anticipation—Partial Removal—Costs.**—Decision of Ch. D. (see Vol. 20, p. 14, vii.) affirmed.—*Thorne-George v. Godfrey*, 72 L.T. 8; 43 W.R. 244.
- (vi.) **C. A.—Separate Estate—Restraint—Judgment Creditors—Receiver.**—Judgment creditors are not entitled to equitable execution over the rents of property of which a married woman is tenant for life for her separate use without power of anticipation, even though such rents were due before the date of the judgment.—*Pillers v. Edwards*, 71 L.T. 788.

Mayor's Court :—

- (vii.) **Q. B. D.—Judgment Debt Under £20—Summons—Jurisdiction.**—The jurisdiction of the Mayor's Court where judgment has been signed for a debt not exceeding £20, to issue and serve a judgment summons upon a debtor residing or carrying on business beyond the limits of the city, is not affected by the Debtors' Act, 1869.—*Schuller v. Wood*, 64 L.J. Q.B. 243.

F

Metropolis Management:—

- (i.) **C. A.**—"Drain"—"Sewer"—*Liability to Repair*.—Decision of Q. B. D. (see Vol. 20, p. 46, ii.) affirmed.—*Pilbrow v. Shoreditch Vestry*, L.R. [1895] 1 Q.B. 433; 72 L.T. 135; 43 W.R. 342.

Metropolitan Carriages:—

- (ii.) **Q. B. D.**—*Defacement of Driver's Licence—Complaint—Jurisdiction*—6 & 7 Vict., c. 86, ss. 8, 22.—A cab proprietor in entering on a driver's licence the dates of his entering and leaving his service, omitted one of the dates, and added a signature, the effect of which would be to prejudice the driver in the eyes of other proprietors. *Held*, that this was "a matter of complaint" which a police magistrate could hear; and that there was a defacement, and evidence of loss and damage on which the magistrate could assess compensation.—*Norris v. Birch*, L.R. [1895] 1 Q.B. 639; 64 L.J. M.C. 91; 43 W.R. 271.

Mine:—

- (iii.) **Q. B. D.**—*Coal—Timbering—Coal Mines Regulation Act, 1887, s. 49, Rule 22*.—The proper construction of the rule mentioned is that props and sprags are to be used where they are "necessary," and not where the workmen think them necessary. The question of necessity is for the justices.—*Gibbon v. Phillips*, 64 L.J. M.C. 42.

Mistake:—

- (iv.) **C. A.**—*Money Paid under Compulsion of Law—Action for Recovery*.—The defendants claimed from the plaintiff a contribution towards street improvement expenses, and issued a summons. The plaintiff paid the claim before the summons was heard, and it was withdrawn. He then discovered that his premises did not abut on the street in question. *Held*, that the money could not be recovered.—*Moore v. Fulham Vestry*, L.R. [1895] 1 Q.B. 399; 64 L.J. Q.B. 226; 71 L.T. 862; 43 W.R. 277.

Negligence:—

- (v.) **Q. B. D.**—*Damage—Remoteness*.—The plaintiff delivered a mare to the defendant to be agisted. She was placed in a field next to a cricket field, with a gate between them, which, owing to the negligence of the defendant's servants, was left open. The mare went into the cricket field while a game was being played, and the cricketers endeavoured in a careful manner to drive her back. She refused to go through the gate, ran against the fence, and was injured. *Held*, that the injury was the natural consequence of the gate having been left open, and that the defendant was liable.—*Halestrap v. Gregory*, L.R. [1894] 1 Q.B. 561; 72 L.T. 392.

Nuisance:—

- (vi.) **Q. B. D.**—*Injury—Cause of—Evidence*.—The defendants owned a wall eighteen inches high abutting on a highway, and topped with a row of spikes, which the jury found to be a nuisance. The plaintiff, a little girl, was found standing by the wall, with a wound in her arm which might have been caused by falling on the spikes. The plaintiff sued for damages for the injury. She was not called as a witness, and there was no evidence as to the manner of the accident, except that of a witness who had shortly before the accident seen the plaintiff climbing up the wall, and told her to get down, which she did. *Held*, that there was evidence for the jury that the nuisance had caused the accident.—*Fenna v. Clare & Co.*, L.R. [1895] 1 Q.B. 199; 64 L.J. Q.B. 238.

- (i.) **C. A.**—*Vibration—Freeholder and Reversioner—Structural Damage—Electric Lighting Acts, 1882 and 1888.*—(See Vol. 19, p. 131, iv.)—*Held* by C. A. that the defendants were not justified in committing the nuisance, and that each of the plaintiffs was entitled to an injunction and damages.—*Meux v. City of London Electric Lighting Co.; Shelford v. the Same*, L.R. [1895] 1 Ch. 287; 64 L.J. Ch. 216; 72 L.T. 34; 43 W.R. 238.

Parish Church:—

- (ii.) **Q. B. D.**—*Notices—Prohibition of—Registration Act, 1843.*—Where there is no parish church notices under the Act must be published in some conspicuous place in the parish. The church of parish A., in the City of London, had been pulled down, and for ecclesiastical purposes the parish had been united with parish B., but the parishes continued to exist with separate officers. *Held*, that the overseers of parish A. were not bound or entitled to affix notices under the Act exclusively on the door of the church of parish B., but must find some conspicuous place in parish A. for their exhibition. The removal of such notices by the incumbent of the united parishes from the door of the church of parish B. is not an offence under the Act.—*Hildred v. Ingram*, 64 L.J. M.C. 57.

Partnership:—

- (iii.) **C. A. & Ch. D.**—*Goodwill—Stipulation as to—Breach of Stipulation.*—Partnership articles between A. and B., provided that the goodwill of the business should belong to A. at the determination of the partnership. *Held*, that B. could not be restrained from making a list of the customers of the firm, with a view to future competition with A.—*Trego v. Hunt*, L.R. [1895] 1 Ch. 462; 72 L.T. 269; 43 W.R. 263 & 371.
- (iv.) **Q. B. D.**—*Loan to Trader—Participation in Profits.*—A loan to a trader for an agreed term carrying interest at five per cent., and an additional sum by way of interest equal to one-half of the profits of the business, but repayable as an aggregate debt at any time within the agreed term upon three months' notice given by the lender under certain conditions, does not of itself make the lender a partner.—*Hollom v. Wichelow*, 64 L.J. Q.B. 170.

Patent:—

- (v.) **Ch. D.**—*Practice—Particulars of Objections—Costs of—Patents, &c., Act, 1883, s. 29, sub-s. 6.*—Where an action for infringement has been disposed of without hearing evidence, and the Court has nothing before it to show whether the defendant's particulars of objections are reasonable and proper, it will not inquire into the facts merely to decide whether the defendant ought to be allowed the costs of the particulars. But where the plaintiff's evidence has been heard, and the particulars appear to be reasonable and proper, a certificate to that effect will be given.—*Mandleberg v. Morley*, 64 L.J. Ch. 245; 72 L.T. 106; 43 W.R. 266.

Poor Law:—

- (vi.) **C. A.**—*Guardians—Debt—Limitation of Time—Costs—Poor Law (Payment of Debts) Act, 1859, s. 1.*—Where a judgment of the House of Lords directed guardians to pay costs, *held*, that there was a debt due from them at the time of the delivery of the judgment, and not when it was drawn up, or when the costs were taxed; and that the time within which the debt must be recovered ran from such delivery of judgment.—*West Ham Guardians v. Bethnal Green Churchwardens*, L.R. [1895] 1 Q.B. 662.

- (i.) **C. A.—Guardians—Limitation of time for Payment of Debt—Costs—Application for Taxation—Quarter Sessions—Taxation out of Sessions.**—An appeal to quarter sessions against an assessment of the appellants' premises having been allowed with costs, the appellants applied to the clerk of the peace, within three months, to tax the costs. *Held*, that this was not a commencement of proceedings before a competent authority to enforce payment, and that as subsequent proceedings were not commenced within three months, the guardians were not liable. When a court of quarter sessions orders payment of costs, and consent to a taxation out of sessions is not given, no subsequent Court can order taxation.—*M.R. v. Edmonton Guardians*, L.R. [1895] 1 Q.B. 357; 64 L.J. Q.B. 113; 71 L.T. 206; 43 W.R. 309.
- (ii.) **H. L.—Rating—Lighting Rate—Coal Mines—"Land."**—Decision of C. A. (see Vol. 19, p. 138, v.) affirmed.—*Thursby v. Briercliffe Churchwardens*, L.R. [1895] A.C. 82; 64 L.J. M.C. 66; 71 L.T. 849.
- (iii.) **H. L.—Rating—Easement.**—Decision of C. A. (see Vol. 19, p. 51, v.) reversed.—*Holywell Assessment Committee v. Halkyn District Mines Drainage Co.*, 71 L.T. 818.

Practice:—

- (iv.) **Q. B. D.—Attachment—Affidavit—Service of—R.S.C., 1883, O. xli., r. 5; O. lii., r. 4.**—The copy of the affidavit to be used in support of a motion for attachment, must state that the order is endorsed with the memorandum pointing out the consequences of neglecting to obey it, and if such statement is omitted, the service is insufficient.—*Stockton Football Co. v. Gaston*, L.R. [1895] 1 Q.B. 453; 64 L.J. Q.B. 228.
- (v.) **Ch. D.—Attachment—Writ—Service—Indorsement—R.S.C., 1883, O. xli., r. 5.**—The special memorandum which under the rule is to be indorsed upon the copy of a judgment or order served upon a person required to obey the same, is not necessary in the case of a merely prohibitive order.—*Hudson v. Walker*, 64 L.J. Ch. 204.
- (vi.) **Ch. D.—Costs—Petition instead of Summons—Order for Sale of Debtor's Interest.**—Where a judgment creditor in possession had proceeded by petition instead of by originating summons, under *R.S.C.*, 1883, O. lv., r. 9b, the costs of proceedings initiated by summons were only allowed.—*In re Martin and Varlow*, 43 W.R. 247.
- (vii.) **C. A.—Discovery—Interrogatories—Relevancy.**—The plaintiff the trustee in bankruptcy of C. alleged that C. and the defendant had been in partnership as dealers in land, and claimed that the defendant was liable to account for C.'s share in certain properties which had been conveyed to C. and the defendant as tenants in common, as being partnership property. The defendant denied the partnership. The plaintiff, in interrogating the defendant, asked for a list of properties in which he and C. had been jointly interested, prior and subsequent to a certain date, and to state whether there were any, and what, written articles of agreement between them with reference to the purchase of land. *Held*, that these interrogatories were irrelevant.—*Kennedy v. Dodson*, L.R. [1895] 1 Ch. 334; 64 L.J. C.A. 257; 71 L.T. 172; 43 W.R. 259.
- (viii.) **C. A.—Discovery—Answer tending to Criminate.**—Decision of Q. B. D. (see Vol. 19, p. 135, i.) affirmed.—*Alabaster v. Harness*, L.R. [1895] 1 Q.B. 339; 64 L.J. Q.B. 76; 71 L.T. 741.
- (ix.) **C. A.—Discovery—Banker's Pass-books—Bankers' Books Evidence Act, 1879, s. 7.**—Where a plaintiff's affidavit of documents schedules his banker's pass-book, the defendant may inspect the entries therein.—*Perry v. Phosphor Bronze Co.*, 71 L.T. 854.

- (i.) **C. A.**—*Dismissal for Want of Prosecution*.—Where the Court of Appeal has ordered a new trial, and the party who has obtained the order has not entered the action for trial, the Court of Appeal has no original jurisdiction to entertain a motion to dismiss for want of prosecution. Application should be made in chambers.—*Roberts v. French*, 71 L.T. 147; 43 W.R. 258.
- (ii.) **C. A.**—*Equitable Execution—Receiver*.—Where the circumstances are exceptional a receiver may be appointed *ex parte* by way of equitable execution.—*Minter v. Kent, Sussex, and General Land Society*, 72 L.T. 186.
- (iii.) **P. D.**—*Equitable Execution—Divorce—Costs—Receiver—Reversionary Interest*.—Where the co-respondent is ordered to pay the petitioner's costs, a receiver may be appointed in respect of his interest in property, being a contingent reversionary interest under a will which contains a clause forfeiting his interest upon his charging the same, and such appointment does not of itself create a charge within the clause.—*Campbell v. Campbell*, 72 L.T. 294.
- (iv.) **Q. B. D.**—*Interpleader—Sheriff—Goods Seized—Delivery to Claimant*.—Where a sheriff has delivered over goods taken in execution to a claimant whose title is admitted by the execution creditor, he cannot seek the protection of the Court by means of interpleader proceedings.—*Moore v. Hawkins*, 43 W.R. 235.
- (v.) **C. A.**—*Mayor's Court—Prohibition—Want of Jurisdiction—Waiver of Objection*.—A defendant does not, by entering an appearance without protest in an action in the Mayor's Court, waive his right to object to the jurisdiction when he ascertains the exact nature of the plaintiff's claim.—*Lee v. Cohen*, 71 L.T. 824.
- (vi.) **Q. B. D.**—*Pauper—Appeal*.—A party who has sued or defended in *formâ pauperis* in the Court below is entitled to appeal as a pauper without either giving security for costs or obtaining special leave so to appeal.—*Biggs v. Dagnall*, L.R. [1895] 1 Q.B. 207; 64 L.J. Q.B. 221.
- (vii.) **Ch. D.**—*Legacy to Children to be paid at Eighteen—Payment out*.—Where a legacy is given to children to be paid when they respectively attain the age of eighteen, with a declaration that their receipts at that age shall be sufficient discharges notwithstanding minority, the Court will order payment of their shares to children who have attained eighteen, and give liberty to those under that age to apply for payment when they respectively attain the age of eighteen.—*Peters v. Tauchereau*, 72 L.T. 220.
- (viii.) **C. A.**—*Summons in Chambers—Reference to Court—Appeal*.—In matters of practice and procedure a judge in chambers has now no power to refer a summons to the Divisional Court. Such a summons cannot be referred to the Court of Appeal. The Judge should either make or refuse an order, giving leave to appeal if necessary.—*Hood-Barre v. Cathcart*, 72 L.T. 184.
- (ix.) **C. A.**—*Third-party Procedure—Notice by one Defendant to Another—Mode of Objection—R.S.C., 1888, O. xvi., rr. 52, 55*.—Where one defendant serves another with a third-party notice, the proper course if the latter objects to have the question between them decided in the action, is not to apply to have the notice set aside, but to take the objection on the summons for directions.—*Baxter v. France*, L.R. [1895] 1 Q.B. 455; 72 L.T. 146; 43 W.R. 227.
- (x.) **C. A.**—*Third-party Procedure—Refusal to Give Directions—R.S.C., 1888, O. xvi., rr. 52, 55*.—The defendants in an action for recovery of land claimed against a co-defendant, their vendor, damages for breach of implied covenants, and an indemnity. It was doubtful in point of law whether there was any right to indemnity. *Held*, that the Judge

at chambers was right in refusing to give directions as to procedure, as there was not a question proper to be tried in the action as to the liability of the co-defendant as third party.—*Baxter v. France*, L.R. [1895] 1 Q.B. 591; 71 L.T. 183; 43 W.R. 341.

- (i.) **C. A.**—*Taxation—Review—Summons for—Appeal—R.S.C.*, 1883, O. liv., r. 23.—A summons for a review of a solicitor's bill of costs is a "matter of practice or procedure" in respect of which an appeal lies from a judge in chambers to the Court of Appeal, and not to a Divisional Court.—*In re Oddy*, L.R. [1895] 1 Q.B. 392; 64 L.J. Q.B. 123; 71 L.T. 861; 43 W.R. 363.
- (ii.) **Ch. D.**—*Vesting Order—Trustee Refusing to Transfer—Time—Costs—Trustee Act*, 1893, ss. 35 (ii) (d), 38.—Jurisdiction to make a vesting order under the section mentioned on the ground that a trustee has refused to transfer stock for twenty-eight days next after a request in writing made pursuant to the section, does not arise until the twenty-eight days have expired, and an order cannot be made upon a petition presented sooner. On petition for such an order the respondent, the recusant trustee, may be ordered to pay the costs.—*In re Knorr's Trusts*, L.R. [1895] 1 Ch. 538.
- (iii.) **C. A.**—*Writ—Specially Indorsed—Amendment—Judge at Chambers—Reference—R.S.C.*, 1883, O. xiv.—On the hearing of a summons in an action on a cheque the defendant objected that the indorsement did not state that notice of dishonour had been given. The summons was adjourned, and the plaintiff amended the indorsement without leave by adding the statement. *Held*, that an order for judgment could rightly be made at the adjourned hearing of the summons. A judge at chambers cannot now refer a summons to the Divisional Court or the Court of Appeal, but ought to adjudicate thereon.—*Roberts v. Plant*, L.R. [1895] 1 Q.B. 597; 71 L.T. 878; 72 L.T. 181; 43 W.R. 308.

Principal and Agent:—

- (iv.) **C. A.**—*Personal Liability of Agent—Money Paid for Principal under Duress—Payment to Agent before Notice—Receiver under Trust Deed.*—A deed executed by a company to secure debentures empowered the trustees to appoint a receiver in certain events as if they were mortgagees. The receiver was to have the power of a receiver under the Conveyancing Act, 1881, and also power to exercise any of the powers conferred by the deed upon the trustees. He was to be deemed the agent of the company. *Held*, that a receiver appointed under the deed, and, in accordance with the powers conferred, carrying on the business under the name of the company, was a mere agent, and incurred no personal liability. The defendant was appointed receiver, and carried on the business. After his appointment the manager of the business, without the defendant's knowledge, compelled the plaintiff, under "duress of goods," to pay a sum for work done which the plaintiff considered exorbitant. The defendant received the money, without knowledge of the duress, and paid it to an account which he had opened as receiver. *Held*, that such payment was a payment as agent to his principal, and that the defendant was not personally liable, as he had no notice of the alleged extortion.—*D. Owen & Co. v. Cronk*, L.R. [1895] 1 Q.B. 265.

Principal and Surety:—

- (v.) **Ch. D.**—*Power to Determine Liability of Surety—Death of Surety—"Representatives."*—A joint and several continuing guaranty bond provided that any one of the obligors, or their respective "representatives," might determine his or their liability by a month's notice in

writing. One of the obligees died, and his executor, who was unaware of the bond, gave the obligees notice only of his death. *Held*, that "representatives" included executor, and that the estate of the deceased was liable, notwithstanding the notice, for debts incurred by the principal debtor after his death.—*M.R. v. Silvester*, L.R. [1895] 1 Ch. 573; 72 L.T. 283.

Railway :—

- (i) **Q. B. D.—Excursion Ticket—Condition Indorsed—Passenger Travelling Beyond Terminal Station—Contract.**—The plaintiffs issued excursion tickets from P. to W., which bore on the back a condition that if used for any other stations they would be forfeited. The defendant took an excursion ticket to W., but travelled on to H., where he tendered the first half of the excursion ticket and the excess fare. The plaintiffs refused the excess fare. In returning the defendant took a ticket to W., and, on arriving at P., tendered the second half of the excursion ticket and the ticket from H. to W., which were refused. *Held*, that assuming that the condition on the back of the ticket was known to the defendant, the plaintiffs were entitled to treat the excursion ticket as forfeited.—*G.N.R. v. Palmer*, 72 L.T. 287; 43 W.R. 316.
- (ii) **Ch. D.—Land Taken—User of—Building Estate—Injury to.**—A railway having taken a part of an estate which was being developed as a building estate, let a small piece which was not immediately required for the purposes of the railway, for the erection of a chapel. The owner of the building estate objected on the ground that it was prejudicial to his estate, and sued for an injunction. No damage was proved as likely to accrue. *Held*, that the user of the land was not unreasonable nor inconsistent with company's objects, and that the action would fail even if damage were shown.—*Onslow v. M.S. & L.R.*, 72 L.T. 256.
- (iii) **C. A.—Purchase of Land—Compensation—Minerals—Railways Clauses Act, 1845, ss. 77-80.**—Decision of Q. B. D. (*see* Vol. 20, p. 52, vi.) affirmed.—*In re Lord Gerard and L. & N.W.R.*, L.R. [1895] 1 Q.B. 459; 72 L.T. 142.
- (iv) **C. A.—Traffic—Rate for Forwarding—Jurisdiction.**—By the special Act of the B. company it was enacted that the T. company should forward traffic to or from the B. company's line at rates not greater than the lowest rate charged by the T. company, and that if on application by the B. company the Railway Commissioners, sitting as arbitrators, should decide that the T. company had failed to give any of the facilities provided for, the B. company should have running powers over the line of the T. company. *Held*, that the Court had jurisdiction to entertain the complaint of the persons aggrieved by an overcharge; and that neither the special Act, nor the Railway and Canal Traffic Act, 1888, gave the Railway Commissioners exclusive jurisdiction.—*Barry Railway Co. v. Taff Vale Railway Co.*, L.R. [1895] 1 Ch. 128; 64 L.J. Ch. 230; 71 L.T. 688; 43 W.R. 372.
- (v) **Ch. D.—Underground Railway—Right to Use Subsoil—"Appropriate."**—A special Act (incorporating the Lands Clauses Act, 1845) empowered a company to make an underground railway, and provided that they might "appropriate and use" the subsoil of the plaintiff's land without wholly taking the land, subject to the liability to make compensation under sect. 68 of the Lands Clauses Act. The company began to bore a tunnel under the plaintiff's land. *Held*, that they were not merely taking an easement, but "land"; that "appropriate" meant "appropriate by way of purchase"; and that they could not "appropriate and use" the subsoil without complying with the provisions of

the Lands Clauses Act with respect to the purchase of land. *Semble*, the provisions of such Act with respect to the entry on lands before agreement apply to the case.—*Farmer v. Waterloo and City Railway Co.*, L.R. [1895] 1 Ch. 527; 72 L.T. 225; 43 W.R. 363.

- (i.) **Railway and Canal Commission Court.**—*Practice—Association of Traders—Complaint Against Increase of Rates—Particulars—Names of Traders—Railway and Canal Traffic Acts*, 1888 and 1894, ss. 7, 31; s. 1, sub-ss. 1, 3, 4.—Upon a complaint by an association of traders that a railway company had since the last day of December, 1892, increased its rates, and that such increased rates were unreasonable, *held*, that the company were not entitled to an order for particulars of the names of the traders represented by the association.—*The Mansion House Association on Railway and Canal Traffic v. G.W.R.*, 72 L.T. 296.

Registration:—

- (ii.) **Q. B. D.**—*Service Franchise—Police—Constable.*—A police constable occupied exclusively, by virtue of his employment, a cubicle, being a portion of a large room, separated by partitions not reaching to the ceiling. *Held*, that the cubicle was not separately occupied as a dwelling within sect. 5 of the Parliamentary and Municipal Registration Act, 1878.—*Barnett v. Hickmott*, 72 L.T. 236; 43 W.R. 284.

Revenue:—

- (iii.) **Q. B. D.**—*Fines on Renewal of Leases—Applied as Productive Capital—Deposit at Bank—Property Tax Act*, 1842, s. 60, sched. A, r. 2, sub-s. 5.—Fines received on renewal of leases and deposited at a bank pending permanent investment are not “applied as productive capital,” so as to be exempt from property tax.—*Lord Mostyn v. London*, L.R. [1895] 1 Q.B. 170; 64 L.J. Q.B. 106; 71 L.T. 760; 43 W.R. 830.
- (iv.) **Q. B. D.**—*Income Tax—Cost-book Mines—Capital or Working Expenses.*—In respect of capital there is no difference between a cost-book mine and any other mine; and the question whether the expense of sinking a new shaft is capital expenditure or working expenses is a question of fact to be decided on the circumstances.—*Morant v. Wheal Greville Mining Co.*, 71 L.T. 758.
- (v.) **C. A.**—*Income Tax—English Company—Business Abroad—Profits not Remitted to England.*—Decision of Q. B. D. (see Vol. 20, p. 54, v.) reversed.—*San Paulo Brazilian Railway Co. v. Carter*, L.R. [1895] 1 Q.B. 580; 72 L.T. 244; 43 W.R. 339.
- (vi.) **Q. B. D.**—*Probate and Estate Duties—Legatees identified by Reference to another Will—Customs and Inland Revenue Acts*, 1881; 1889, s. 5.—A testator bequeathed his personal estate to his brother, and directed that if the brother should pre-decease him, it should go to his executors or administrators, as if the brother had survived, and died immediately after the testator. The brother died before the testator, leaving a will, whereby he appointed executors. *Held*, that the brother's executors were not chargeable with double duties.—*Attorney-General v. Loyd*, L.R. [1895] 1 Q.B. 496.
- (vii.) **P. C.**—*Probate Duty—Business in England and Victoria.*—Testator carried on business in England in the firm of “F. and Sons,” and in Victoria in the firm of “F. and Co.” The partners were the same in both firms, and were domiciled in England. The goods sent to Victoria were bought in Europe, and paid for by money sent from Victoria. The books of the two firms were kept distinct, and the profits in Victoria were remitted to the partners in England. *Held*, that the business of “F. and Co.” was situate in Victoria, and that the interest of the testator in it was liable to probate duty in Victoria.—*Beaver v. Master in Equity of the Supreme Court*, 72 L.T. 127.

- (i.) **Q. B. D.—Stamp Act, 1891, ss. 72, 75, and Schedule—Bond—Security—Lease.**—By instrument under seal a telephone company agreed to supply J. with a wire and apparatus, in consideration of an annual payment by quarterly instalments. The agreement was to continue for ten years, and thereafter, from year to year, determinable as provided. Power was given to the company to determine on failure to pay the annual sum, and to recover damages for such failure; and also to enter for repairing. The exclusive use of the wire and apparatus was reserved to J. *Held*, that the instrument was chargeable with duty as a bond, being the security for money payable at stated periods, and not as a lease.—*Jones v. Inland Revenue Commissioners*, 64 L.J. Q.B. 84; 71 L.T. 768.
- (ii.) **Q. B. D.—Stamp Duty—Bond—Security—Stamp Act, 1891, ss. 72, 75, and Schedule.**—By instrument under seal a railway company agreed to allow the appellants to erect and maintain a certain number of machines at certain stations in consideration of an annual payment, subject to a power of determining the agreement, the company to have power to shift the machines or to remove them to other stations. *Held*, that the instrument was chargeable as a bond or covenant to secure a sum of money at stated periods.—*Sweetmeat Automatic Delivery Co. v. Inland Revenue Commissioners*, L.R. [1895] 1 Q.B. 484; 64 L.J. Q.B. 84; 71 L.T. 763; 43 W.R. 318.

Riparian Owner:—

- (iii.) **P. C.—Navigable River—Sale of Water Power.**—A riparian owner may acquire a right to water power in a navigable river, and sell the same as appurtenant to land. A. sold to X. a piece of land on the bank of a river, "together with a quantity of water power, equivalent to 50 horse-power, to be taken off from the water power and dam of the said vendors," with a warranty "against all troubles and hindrances whatsoever." *Held*, that the purchaser was entitled to a supply of water power in priority to the vendor, or his tenants, in case the supply should fall short of the requirements of all parties.—*Hamelin v. Bannerman*, 72 L.T. 129.

Sale of Goods:—

- iv.) **Q. B. D.—Hire-purchase Agreement—Fraudulent Sale by Hirer—Conviction—Reverting of Title—Sale of Goods Act, 1893, s. 24.**—Where the hirer of goods under a hire-purchase agreement fraudulently sold them before the instalments were paid, and was convicted for larceny as a bailee, *held*, that the title to the goods had passed to the purchaser under the Factors' Act, 1884, and did not revert to the original owner on conviction.—*Payne v. Wilson*, L.R. [1895] 1 Q.B. 653; 72 L.T. 110; 43 W.R. 250.
- (v.) **Q. B. D.—Memorandum in Writing—Acceptance—Sale of Goods Act, 1893, s. 4, sub-ss. 1, 3.**—The defendant made a contract to buy hay from the plaintiff to be delivered on July 21st. He after that date, the hay not having been delivered, verbally agreed to accept delivery on August 8th. On that day, the hay having arrived, he went on board the barge in which it was, took a sample, and refused the hay as not being according to contract. *Held*, that there was no memorandum in writing of a contract to deliver on August 8th, and that there was no such dealing with the goods as to constitute an acceptance.—*Abbott & Co. v. Wolsey*, 72 L.T. 117; 43 W.R. 270.

Scotch Law:—

- (vi.) **H. L.—Pledge—Redelivery to Pledgor—Conflict of Laws.**—The pledgors of a bill of lading representing a specific cargo were under contract to sell a larger quantity of like goods to a third party. The pledgees

returned the bill of lading to the pledgors to enable them to get possession of the goods and sell on the pledgee's behalf, and account for the proceeds. *Held*, that their security was not affected, and that they were entitled to the proceeds of the cargo, as against general creditors of the pledgors. A question between parties domiciled in England as to a movable fund situated in Scotland is generally a question of English law.—*North-Western Bank v. Poynter*, L.R. [1895] A.C. 56; 72 L.T. 98.

Settlement:—

- (i.) **Ch. D.**—*Postnuptial—Valuable Consideration—Cesser of Interest on Bankruptcy—Married Women's Property Act, 1882, s. 3.*—The section above mentioned only applies where the wife's property has been lent to the husband for the purposes of his trade or business. A husband received from his wife some of her separate property, part of which he lost in speculation. He then settled the remainder and some property of his own on the usual trusts, the husband's life interest being determinable on bankruptcy. He was made bankrupt, and the trustee sought to set aside the settlement. *Held*, that the wife was a purchaser for valuable consideration and in good faith, and that the settlement was good. *Held*, also, that to the extent of the wife's money lost by the husband, the property brought into settlement by him was the wife's property, and that it might be limited to him until bankruptcy.—*Mackintosh v. Pogose*, L.R. [1895] 1 Ch. 505; 64 L.J. Ch. 274; 72 L.T. 251; 43 W.R. 247.

Ship:—

- (ii.) **Q. B. D.**—*Charter-party—Demurrage—Strikes.*—A ship was chartered to go to A., and load a cargo of coal "in the customary manner, say in twelve colliery working days," "Strikes and lock-outs of pitmen and others" being excepted perils. It was provided, "It is understood that the vessel is to be loaded at once, and lay days to count when vessel ready and notice given." She arrived at A., and notice was given, but before the twelve days had elapsed a strike took place, and she was not loaded till twenty-three working days had passed. *Held*, that the last proviso only fixed the time when the lay days began, that the delay was caused by an excepted peril, and that no demurrage was payable.—*Petersen v. Dunn & Co.*, 43 W.R. 349.
- (iii.) **P. D.**—*Collision—Anchoring in Thames—Thames Bye-Laws, 1887, Art. 18; 1892, Art. 7 (c).*—When a steamship anchors in the Thames on account of fog, she must, while lying across the stream, not having yet swung to her anchor, give rapid blasts with her whistle. She ought to take in her side-lights when the anchor holds, and if more than 150 feet long, shew a second riding light near the stern, although she has a stern light shewing twenty points.—*The Wega*, L.R. [1895] P. 156.
- (iv.) **P. D.**—*Collision—Compulsory Pilotage—Port of Bristol.*—*Held*, that the boundary of the port of Bristol as defined by the Pilotage Order Confirmation Act, 1891, is a straight line between the Holms and Aust. *Held*, also, that where a collision happened outside the port of Bristol but within the Bristol Channel Pilotage District, within a part of which (namely, the port of Bristol) pilotage was compulsory, as one pilotage rate was payable to a part of the district beyond the place of the collision, the defendants were not liable for the negligence of the pilot.—*The Charlton*, 72 L.T. 198.
- (v.) **P. D.**—*Compulsory Pilotage—Coasting Trade—Merchant Shipping Act, 1854, s. 379—Order in Council, 21st December, 1871.*—A vessel carrying cargo for delivery at a foreign port is not engaged in the

coasting trade, even though she goes from one home port to another to complete her cargo, and is therefore not exempt from compulsory pilotage. The word "Europe" in the section and Order mentioned is used in contra-distinction to the "United Kingdom," and therefore a ship trading to Cardiff is not trading to a place in Europe, north and east of Brest, and is not exempt from compulsory pilotage.—*The Winestead*, 72 L.T. 91.

- (i.) **Q. B. D.—Compulsory Pilotage—Qualification—Merchant Shipping Act, 1854, s. 353.**—A. held a licence entitling him to conduct exempted ships only up and down the Thames. B. was master of an unexempted ship which A. offered to pilot in the Thames, no pilot licensed for unexempted ships having offered himself. B. refused and employed an unlicensed pilot. *Held*, that A. was not a qualified pilot for the purpose of B.'s ship, and that B. was not liable to a penalty for refusing him.—*Stafford v. Dyer*, L.R. [1895] 1 Q.B. 566; 72 L.T. 114.
- (ii.) **H. L.—Consignee for Sale—Liability for Freight.**—Decision of C. A. (*see* Vol. 19, p. 103, iv.) reversed.—*White & Co. v. Furness, Withy & Co.*, L.R. [1895] A.C. 40; 64 L.J. Q.B. 161; 72 L.T. 157.
- (iii.) **C. A.—General Average.**—Decision of P. D. (*see* Vol. 20, p. 56, ii.) affirmed.—*The Bona*, L.R. [1895] P. 125; 71 L.T. 870; 43 W.R. 289.
- (iv.) **C. A.—Insurance—Policy Partly Written and Partly Printed—Attachment.**—Decision of Q. B. D. (*see* Vol. 20, p. 24, i.) reversed.—*Hydarnes Steamship Co. v. Indemnity Mutual Marine Assurance Co.* L.R. [1895] 1 Q.B. 500; 72 L.T. 102.
- (v.) **C. A.—Insurance—Payment to Insurance Broker—Bills of Exchange.**—Policies of insurance on the plaintiffs' goods were effected with the defendants by brokers. The plaintiffs authorised the brokers to settle their claim against the defendants, and to receive payment in cash according to the custom. The brokers took a three months' bill instead of cash. They discounted the bill, and it was eventually paid by the defendants. The brokers failed and did not pay the plaintiffs. *Held*, that the taking of the bill was not within the brokers' authority, and contrary to custom, and did not constitute a payment to the plaintiffs, even though paid when due.—*Hine Brothers v. Steamship Insurance Syndicate*, 72 L.T. 79.
- (vi.) **Q. B. D.—Insurance—Freight—"Cancelling of Charter"—Delay.**—A policy upon freight provided "no claim arising from the cancelling of any charter shall be allowed." The vessel on her way to a port of loading under a charter-party was so delayed by the perils of the sea that the contemplated voyage became impossible; but the charter was never actually set aside. *Held*, that the charter was "cancelled" within the meaning of the policy, and that the insurers were not liable.—*In re Jamieson and the Newcastle Steamship Freight Insurance Association*.—L.R. [1895] 1 Q.B. 510; 64 L.J. Q.B. 222; 72 L.T. 195.
- (vii.) **P. D.—Joint Liability—Payment by one Wrong-Doer—Indemnity—Mercantile Law Amendment Act, 1856, s. 5.**—The section above-mentioned only applies where there is a joint debt existing before the judgment creating the liability, and, further, where the joint liability arises out of contract, express or implied.—*The Englishman* (No. 2), 72 L.T. 203.
- (viii.) **P. D.—Limitation of Liability.**—The owner of a sailing-ship, in calculating the registered tonnage upon which his statutory liability in damages is based, may deduct the navigation spaces mentioned in The Merchant Shipping (Tonnage) Act, 1889, s. 3, sub-s. 1 (a) (b) (i) (ii).—*The Pilgrim*, L.R. [1895] P. 117.

- (i.) **P. D.—Jurisdiction—Writ in Rem—Removal of Ship—Judgment by Default.**—Due service of a writ in rem, without arrest of the ship, is sufficient to notice to the persons interested to found jurisdiction, and to enable the Court to give judgment against them by default. Judgment by default was given where the ship of the defendant, in an action for damage to cargo, was secretly removed out of the jurisdiction, after service of the writ in rem, but before arrest.—*The Nautik*, L.R. [1895] P. 121; 72 L.T. 21.
- (ii.) **P. D.—Salvage—Fire—Ship in Dock.**—A fire broke out on a ship lying in dock. Another ship extinguished the fire by her fire hose. The service might have been rendered by a fire engine ashore. *Held*, that it was not a case of sea salvage, and that an offer of £200, the value of the salvaged vessel being £9,500, was sufficient.—*The City of Newcastle*, 71 L.T. 848.
- (iii.) **C. A.—Practice—Salvage—Appeal—Costs.**—It is the general rule, when the amount of salvage is reduced on appeal, to allow no costs of the appeal. There is, however, a discretion to give costs in any particular case.—*The Gipsy Queen*, 43 W.R. 359.
- (iv.) **P. D.—Practice—Salvage—Consolidation.**—The Court orders consolidation of salvage suits from considerations of convenience and economy without regard to the consent of the parties.—*The Strathgarry*, 72 L.T. 202.
- (v.) **P. D.—Practice—Function of Assessors—Opinion of Judge.**—In a collision action in the county court, the nautical assessors considered that the plaintiff was to blame. The Judge formed an opinion in favour of the plaintiff, which he expressed, but, yielding to his assessors, gave judgment for the defendant. *Held*, on these facts, that the Court could not alter the decision.—*The Fred*, 72 L.T. 153.

Slander :—

- (vi.) **C. A.—Imputation of Misconduct in Public Office—Special Damage.**—An action will lie without special damage for words implying dishonesty or malversation in a public office of trust, though it is not one of profit, and whether or not there is a power of removal from the office for such misconduct.—*Booth v. Arnold*, L.R. [1895] 1 Q.B. 571; 43 W.R. 360.

Solicitor :—

- (vii.) **C. A.—Company—Costs of Private Act—General and Separate Capital.**—Decision of Q. B. D. (see Vol. 20, p. 25, i.) reversed.—*Nichols v. North Metropolitan Railway and Canal Co.*, 71 L.T. 836.
- (viii.) **Ch. D.—Taxation—Delivery of Bill—Common Order.**—An action for dissolution of partnership was instituted, and there were negotiations for a settlement. The plaintiff's solicitors sent to the defendant's solicitors a draft agreement, which provided for payment of the plaintiff's costs by the defendant. They also sent their draft bill of costs for £48 19s., with a letter explaining that it was sent that it might be perused and the agreed amount inserted in the agreement. Accordingly £45 was inserted in the agreement as the agreed amount. The action was abandoned, and the defendant then obtained the common order to tax. *Held*, that the sending of the bill, as stated, was not a delivery of the bill, and that the defendant was not entitled to a common order to tax.—*In re Hulbert v. Crowe*, 71 L.T. 748.

Specific Performance:—

- (i.) **Ch. D.—Lease—Agreement for—Omission of Date of Commencement—Agreement not to Underlet without Licence—Responsible Underlease.**—Plaintiff and defendant signed an agreement on March 28th, by which defendant agreed to take an underlease of a house. The date of commencement of the underlease was not mentioned, but was understood to be April 7th, and this date was afterwards agreed to by letter. *Held*, that there was a good contract on March 28th. The plaintiff's lease contained a covenant not to underlet without licence, the licence not to be refused in the case of a responsible undertenant. The defendant was a responsible tenant, but the lessor refused his licence except on certain terms. *Held*, that the defendant would get a good title and ran no substantial risk, and must specifically perform the contract.—*White v. Hay*, 72 L.T. 281.

Trade Mark:—

- (ii.) **Ch. D.—Invented Word—Registration—Patents, &c., Acts, 1883, s. 64; 1888, s. 10, sub-s. 1 (d) (e).**—Tea merchants registered a combined word "Mazawatee," composed of a Hindoo word "maza," meaning taste, and a Cingalese word "watee," meaning a garden. *Held*, that it was an invented and not a descriptive word, and was properly registered.—*In re Densham's Trade Mark*, 64 L.J. Ch. 286; 72 L.T. 148.

Trade Name:—

- (iii.) **C. A. & Q. B. D.—Name Indicating Manufacturer—Common Law Right—True Description.**—A manufacturer is entitled, as of common law right, to call his goods by a name which is merely a substantially true description of them, although by reason of another person having for many years sold similar goods under that name purchasers may be misled into the belief that they are buying that person's goods.—*Reddaway v. Banham*, L.R. [1895] 1 Q.B. 286; 72 L.T. 73; 43 W.R. 294.

Trustee:—

- (iv.) **Ch. D.—Reversionary Legatee—Right to Information—Costs—R.S.C., 1883, O. lxx., r. 11.**—The plaintiff being entitled under a will to one-ninth share of £900 on the death of a tenant for life, demanded from the trustees particulars of the investments of the testator's estate. The estate was amply sufficient. *Held*, that he was entitled to the particulars. The plaintiff's solicitor having shown unreasonable haste in commencing litigation, the order for the particulars was made without costs, and an order was made that the solicitor should be disallowed costs against his own client.—*Sawyer v. Goddard*, L.R. [1895] 1 Ch. 474.
- (v.) **C. A.—Unreasonable Conduct—Liability.**—Though a trustee is honest, if he, through over caution or otherwise, acts unreasonably, vexatiously, and oppressively, and thereby causes expense, he must bear such expense, and not throw it upon the trust funds.—*Freeman v. Parker*, 72 L.T. 66.

Vendor and Purchaser:—

- (vi.) **Ch. D.—Contract—Right to Rescind—Exercise of.**—Where a vendor has a right to rescind the contract in case the purchaser should insist on a requisition, he must exercise the right fairly, and may not keep the purchaser in ignorance of his intentions while he is negotiating with an alternative purchaser.—*Smith v. Wallace*, L.R. [1895] 1 Ch. 385; 64 L.J. Ch. 240; 71 L.T. 814.

- (i.) **Ch. D.—Title—Legal Estate of Trustees—Extent of.**—A. devised freeholds and copyholds to trustees upon trust to pay rents and profits to B. for life, and after her death to stand seised upon trust for such persons as B. should appoint, and in default of appointment the testator devised the estate to B. in fee simple. The trustees were admitted tenants. B., by will, directed them to sell the copyholds. The trustees of her will sold the copyholds, the title commencing with the will of A., the trustees of which were stated to be dead. The purchaser required that the devolution of the legal estate should be traced. The vendors replied that the trustees of A.'s will took only an estate for B.'s life. *Held*, that the legal estate was vested in the trustees of A.'s will, and that the purchaser's requisition had not been sufficiently answered.—*In re Townsend's Contract*, 43 W.R. 392.

Vestry:—

- (ii.) **Q. B. D.—Metropolis—Vestryman—Disqualification—Quo Warranto—Metropolis Management Act, 1855, ss. 6–10, 37, 54.**—The writ of *quo warranto* will not lie against a vestryman, who has ceased to be qualified, unless he has acted as vestryman since disqualification.—*Reg. v. Williams*, 64 L.J. M.C. 34.

Warranty:—

- (iii.) **C. A. & Q. B. D.—Given in Error—Damage—Right of Principal to Sue.**—The plaintiff contracted to supply the defendant's ship, then at N., with coals. He telegraphed to his house at N. with instructions as to drawing on the defendant. The telegram contained a code word which meant that the ship was to go to R. By a mistake in transmission the word was altered into one which meant that she was to go to C. The master of the ship was informed, and received a letter from the plaintiff's house confirming the accuracy of the information, and went to C., which caused the defendant a loss, for which he counter-claimed in an action for the price of the coal. *Held*, that the letter to the master was a warranty on which the defendant could sue; and that he was entitled to succeed on the counter-claim.—*Brown v. Law*, 71 L.T. 770 and 72 L.T. 185.

Water Company:—

- (iv.) **C. A.—Parliamentary Powers—Interference with Water Supply.**—Decision of Ch. D. (*see* Vol. 20, p. 27, vi.) reversed.—*Corporation of Bradford v. Pickles*, L.R. [1895] 1 Ch. 145; 64 L.J. Ch. 101; 71 L.T. 793.

Weights and Measures:—

- (v.) **Q. B. D.—Milk Churns—Weights and Measures Act, 1878, s. 25.**—A., a farmer, sent milk to X. in churns, each marked as containing a specified quantity, and containing a gauge indicating the quantity of milk. Two of the churns were tested, and found to contain two pints less than the marked quantity. *Held*, that the churns were measures within the Act, and were false, and that A. was rightly convicted.—*Harris v. London County Council*, L.R. [1895] 1 Q.B. 240; 64 L.J. M.C. 81; 71 L.T. 844.

Will:—

- (vi.) **Ch. D.—Construction—Annuity—Charge of.**—Testator devised to H. lands subject to a previous interest, and charged the reversion thus created with the payment of an annuity to S., the first payment to be made six months after the testator's death. *Held*, that the annuity commenced at the testator's death, but was only charged on the reversion at the termination of the preceding interest.—*Williams v. Williams*, 43 W.R. 875.

- (i.) **C. A.—Construction—Class—Next-of-Kin—Time for Ascertaining.**—The ultimate trusts of a testator's real and personal estate were for his "own right heirs and next-of-kin according to the nature of the said property" without any reference to intestacy or the Statute of Distributions. The several tenants for life were restricted from alienating their life interests. *Held*, that the class to take must be ascertained at the death of the testator, and not at the period of distribution.—*Patten v. Sparks*, 72 L.T. 5.
- (ii.) **C. A.—Construction—Mortmain—Mortmain Acts, 1888, s. 4; 1891, s. 5.**—Decision of Ch. D. (see Vol. 20, p. 60, vi.) affirmed.—*Forbes v. Hume*, L.R. [1895] 1 Ch. 422; 64 L.J. Ch. 267; 72 L.T. 68; 43 W.R. 291.
- (iii.) **C. A.—Construction—General Restraint of Marriage.**—A testator bequeathed a fund upon trust for his daughter for life for her separate use, remainder in trust for her children, with a gift over in default of children. By a codicil he declared that his will was that the daughter should not marry; and directed that, in case of her marriage or death, the fund should be held upon trust for the persons mentioned in the gift over. It was held, in 1843, that the limitation over contained in the codicil was void as regarded the life interest, being in general restraint of marriage. On the daughter's death leaving issue, *held*, that the will and codicil must be read together, that the construction was that the fund should go over on death or marriage, which should first happen, and that as it could not go over on marriage the daughter's children were entitled.—*Morley v. Rennoldson*, L.R. [1895] 1 Ch. 449.
- (iv.) **Ch. D.—Construction—Precatory Trust.**—A gift purporting to vest property in a legatee absolutely and for his own benefit is not confined to a life interest or made subject to a precatory trust merely by an expression of the testator's wish that the legatee shall, by will or otherwise, make a disposition in favour of others which could equally be effected by the legatee by virtue of his beneficial ownership.—*Trench v. Hamilton*, L.R. [1895] 1 Ch. 373; 72 L.T. 88.
- (v.) **P. C.—Construction—Trust by Reference—Multiplication of Charges.**—Testator gave his whole estate upon trust: (1) to pay the income of £20,000 to his wife so long as she remained his widow; (2) after her second marriage to pay her the income of £10,000 for life; (3) after her death to pay the income of £20,000 for the benefit of his children; (4) in case of her marrying again to apply the income of the balance of the £20,000 upon the last mentioned trusts; (5) subject to the said trusts to pay to each child attaining twenty-one half of the capital sum therein bequeathed in trust; (6) out of the residue to pay his brother £10,000; (7) the ultimate residue to be held upon the trusts declared of the £20,000. *Held*, that on remarriage the widow was not entitled to any interest in the ultimate residue.—*Trew v. Perpetual Trustee Co.*, 72 L.T. 241.
- (vi.) **Ch. D.—Satisfaction.**—A legacy of £400, no time of payment being fixed, *held*, not to be a satisfaction of a debt of £300 payable to the legatee by the testator within three months after his death.—*Calham v. Smith*, L.R. [1895] 1 Ch. 516; 72 L.T. 223; 43 W.R. 410.
- (vii.) **P. D.—Probate—Document—Incorporation of.**—A testator devised property to trustees to provide an annuity of £3,000 for his wife, setting apart certain funds which they would find "noted" by him. After his death a document was found in his handwriting, purporting to be instructions to his executors, and containing the words, "the stocks to be set apart to pay my wife the £3,000 per annum," followed by a list of securities. The earliest date which could be attributed to the document was after the will, but before two codicils which confirmed the will. *Held*, that as the language of the will did not refer to

the document as existing, the codicils had not the effect of incorporating it with the documents entitled to probate.—*Durham v. Northern*, L.R. [1895] P. 66.

- (i.) **P. D.—Probate—Executor—Substitutionary Appointment.**—Testatrix appointed as executors C., T. and S., and if either of them should decline to act she appointed "in their place" B. or F. S. renounced probate and F. could not be heard of. Probate was granted to C., T. and B.—*In the goods of Bradford*, 72 L.T. 267.
- (ii.) **P. D.—Probate—Foreign Will—English Assets.**—A domiciled German died in Germany, leaving a German will. The German Court appointed executors, who applied for probate in respect of the English assets of the deceased. Probate granted accordingly (see Vol. 20, p. 29, vi.).—*In the goods of Briesemann*, 72 L.T. 268.
- (iii.) **P. D.—Probate—Execution—Position of.**—Testatrix obtained a printed form of will, and filled in her name and a description of property as "money, furniture, house linen, wearing apparel, and jewellery," which she bequeathed to her "sisters and friends." The execution was at the foot of the will. On the second and third pages there appeared a list of specific bequests in the handwriting of the testatrix to persons, some of whom were her sisters and others her friends. *Held*, that only the first page was entitled to probate.—*Royle v. Harris*, 43 W.R. 352.
- (iv.) **P. D.—Probate—Res inter Alios Acta.**—A person who is not a party to probate proceedings in which the validity of a will is questioned, is not bound by the result unless he was cognizant of the proceedings and was entitled to intervene. A person who was cognizant of, and had assisted the plaintiff in, a probate action, but was not aware that he was interested, and, therefore, not entitled to intervene, *held*, not bound by the result of the action.—*Young v. Holloway*, L.R. [1895] P. 87; 72 L.T. 118.

Quarterly Digest.

BY

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INDEX

of the cases reported during May, June, and July, 1895.

Where a case has already been given in the Digest for a preceding quarter, the additional report is given after the name of the case, with a reference to the volume of the Digest in which it first appeared, the thick number being the number of the volume.

- ABBOTT v. MINISTER FOR LANDS, 99, v.
— v. Wolsey (64 L.J. Q.B. 388),
20, 87, v.
— v. —, 117, viii.
Aitken v. McMeckan, 125, i.
Alexandre v. Brassard, 99, iv.
Alliott v. Smith, 114, vi.
Allport v. Securities Co., 106, v.
Anderson v. A. (L.R. [1895] 1 Q.B.
749; 64 L.J. Q.B. 457; 72 L.T. 313),
20, 71, vi.
Andrews v. Nott-Bower, 108, iv.
Atlantic and North-Western Rail-
way Co. v. Wood (L.R. [1895] A.C.
257), 20, 67, iv.
Attenborough v. Henschel (L.R.
[1895] 1 Q.B. 833), 20, 70, vii.
A.-G. v. Jacobs Smith (64 L.J. Q.B.
270), 20, 54, i.
— v. Lloyd (64 L.J. Q.B. 365),
20, 86, vi.
— v. North Metropolitan Tram-
ways Co., 114, v.
BAKER v. STONE, 124, iv.
Bank of S. Australia, *re*, 102, iv.
Bankruptcy Notice, *re*, 97, i.
Barnett v. Hickmott ((L.R. [1895]
1 Q.B. 690; 64 L.J. Q.B. 407), 20,
86, ii.
Barry, &c., Local Board v. Parry,
110, vi.
Bartlett v. Ford's Hotel Co., 96, iii.
Bates v. Plumstead Overseers, 112, iii.
Baynes v. Lloyd, 108, i.
Baxter v. France (64 L.J. Q.B. 335),
20, 83, ix.
Baxter v. France (64 L.J. Q.B. 337),
20, 83, x.
Beauleck v. B., 106, iv.
Beaver v. Master in Equity (L.R.
[1895] A.C. 251), 20, 86, vii.
Bird v. St. Mary Abbott's Vestry,
110, i.
Bishop v. Smyrna Railway Co.,
102, v.
Black v. Dawson, 116, i.
— v. Williams, 119, i.
Blue Bell, the, 118, iii.
Board of Trade, *e. p.*; *re* Hedley,
98, ii.
— v. Provident Clerks
Guarantee Association, 98, iv.
Bolton v. Curra, 121, vi.
Bona, the (64 L.J. P. 62), 20, 89, iii.
Bonhote v. Henderson, 118, ii.
Booth v. Arnold (64 L.J. Q.B. 443;
72 L.T. 310), 20, 90, vi.
Botten v. City and Suburban Build-
ing Society, 99, i.
Bower v. Goodman, 124, vi.
— v. Hett, 96, vi.
Bowling & Welby, *re*, 101, v.
Brocklesby v. Temperance, &c.,
Building Society, 116, ii.
Brophy v. A.-G. for Manitoba (L.R.
[1895] A.C. 202), 20, 67, v.
Brothwood v. Keeling, 95, i.
Brown, Janson & Co. v. Hutchinson,
113, ii., iii.
Bryant, *e. p.*; *re* B. (64 L.J. Q.B.
417), 20, 66, ii.
Burdekin, *re*, 119, v.
Burlington, the, 118, vi.

- Bury v. Thompson (L.R. [1895] 1 Q.B. 696; 64 L.J. Q.B. 257), 20, 76, i.
- CALHAM v. SMITH (64 L.J. Ch. 325), 20, 98, vi.
- Canterbury (Mayor of) v. Wyburn (64 L.J. P.C. 36; 43 W.R. 430), 20, 67, iii.
- Cartwright v. Regan, 98, vii.
- Casgrain v. Atlantic and North-Western Railway, 99, iii.
- Chartered Bank of India, &c. v. Macfadyen (64 L.J. Q.B. 367; 72 L.T. 428), 20, 64, iii.
- Chichester v. Quatrefages, 124, vii.
- Chilton v. Progress Printing. &c., Co., 103, iii.
- Chipperfield v. Carter, 120, iii.
- Clacton Local Board v. Young (64 L.J. M.C. 124), 20, 77, v.
- Clayton v. Barclay, 123, iii.
- Combridge v. Harrison, 104, v.
- Cook's Mortgage, *re*, 122, v.
- Cooke, *goods of* (43 W.R. 428), 20, 64, i.
- Cooper v. Stephens (64 L.J. Ch. 403; 72 L.T. 390; 43 W.R. 444) 20, 70, v.
- County Estates Co. v. Graves (64 L.J. P.C. 44) 20, 68, ii.
- Cunnack v. Edwards (64 L.J. Ch. 344; 72 L.T. 386), 20, 78, ii.
- DEARBURG v. LATCHFORD, 104, ii.
- Deeley's Patent, *re*, 113, iv.
- Densham's Trade Mark, *re*, 121, iii.
- Derby, Mayor of, v. Grudgings (72 L.T. 594), 20, 13, iii.
- Dickson v. Law, 115, vii.
- Dodds v. South Shields Assessment Committee, 113, v.
- Dolcini v. D., 98, vi.
- Downes v. Johnson, 105, ii.
- Dyer v. Munday, 111, vi.
- ECCLESIASTICAL COMMISSIONERS v. WODEHOUSE (64 L.J. Ch. 329), 20, 72, i.
- and
New City of London Brewery Co., *re*, 99, ii.
- Edwards v. Brown, 115, v.
- Edwardes, *c. p.*; *re* E., 97, vi.
- Ehrmann v. E., 115, iv.
- Englishman, *the* (L.R. [1895] P. 212), 20, 89, vii.
- Faerelandel, *the*, 118, iv.
- Fairtlough v. Whitmore, 105, iv.
- Farmer v. Waterloo and City Railway Company (64 L.J. Ch. 338), 20, 85, v.
- Flood v. Jackson, 111, vii.
- Forget v. Ostigny, 105, iii.
- Formby and Holmes, *re* (64 L.J. Q.B. 391), 20, 43, v.
- Foster v. L.C. & D.R. (L.R. [1895] 1 Q.B. 711), 20, 52, iv.
- v. Mayor of Sheffield, 96, ii.
- Fox v. Martin, 100, i.
- Freme v. Hall, 123, ii.
- Freme's Contract, *re*, 124, v.
- GENERAL ASSURANCE CO. v. WORSLEY (72 L.T. 358), 20, 76, iii.
- Gerard (Lord) & L. & N.W.R., *re* (64 L.J. Q.B. 260), 20, 85, iii.
- Gibson, *c. p.*; *re* Low (L.R. [1895] 1 Q.B. 734; 64 L.J. Q.B. 362; 72 L.T. 450), 20, 65, iii.
- Gill v. Edouin, 112, vi.
- Gipsy Queen, *the* (L.R. [1895] P. 176; 72 L.T. 454), 20, 90, iii.
- Gloucester Bank v. Rudry Merthyr Colliery Co., 112, iv.
- Goaling v. Newton, 123, iv.
- Grant v. Thompson (43 W.R. 446), 20, 78, vi.
- G.N.R. v. Palmer (L.R. [1895] 1 Q.B. 862; 64 L.J. Q.B. 306), 20, 85, i.
- Grehan, *re*, 110, vii.
- Griffiths v. Morris (L.R. [1895] 1 Q.B. 866; 64 L.J. Q.B. 386), 20, 75, v.
- Groom v. Cheesewright, 119, vi.
- Gwilliam v. Twist, 111, v.
- Gwynne v. Drewitt (43 W.R. 551), 20, 25, vii.
- HADLEY v. BEEDOM (72 L.T. 493), 20, 66, iv.
- Halestrap v. Gregory (64 L.J. Q.B. 415; 43 W.R. 507), 20, 80, v.
- Hamelin v. Bannerman (L.R. [1895] A.C. 237), 20, 87, iii.
- Hanfstaengl v. American Tobacco Co. (64 L.J. Q.B. 277), 20, 70, iii.
- Hasluck, *c. p.*; *re* North, 96, v.
- Henderson v. Williams (64 L.J. Q.B. 308), 20, 72, iii.
- Hestia, *the*, 119, ii.
- Hill v. Hair, 110, v.
- Hodkinson v. H., 122, ii.
- Holywell Assessment Committee v. Halkyn Drainage Co. (L.R. [1895] A.C. 117; 64 L.J. M.C. 113), 20, 82, iii.

Hood-Barrs v. Cathcart (64 L.J. Q.B. 352), 20, 88, viii.

— v. —, 107, i.

— v. —, 111, ii.

Humphriss v. Worwood, 112, v.

Hunter v. Dowling, 118, i.

Hydarnes Steamship Co. v. Mutual Marine Indemnity Association (64 L.J. Q.B. 353), 20, 89, iv.

JOHNS V. VON TROMP, 96, i.

Ile of Wight Highway Commissioners, re, 106, i.

JAMIESON V. NEWCASTLE STEAMSHIP FREIGHT INSURANCE ASSOCIATION, 118, vii.

Jones v. J., 106, ii., iii.

Katy, the (64 L.J. P. 49), 20, 55, v.

Kelly v. Metropolitan Railway Co., 114, iv.

Kent County Council v. Humphrey, 123, v.

— and Sandgate Local Board, re, 109, iv.

Knight v. K. (43 W.R. 472), 20, 67, ii.

Knox's Trusts, re (64 L.J. Ch. 402; 72 L.T. 416; 43 W.R. 442), 20, 84, ii.

Kops v. Reg. (64 L.J.P.C. 34), 20, 9, i.

LAMBERTON V. KERR, 117, v.

Lavy v. London County Council, 112, i.

Le Bas v. Grant, 115, ii.

Lewis, e. p.; re Bassett, 115, vi.

Logan, e. p.; re Smith, 98, v.

London and General Bank, re, 102, iii.

— Metallurgical Co., re, 102, i.

Lord of the Isles, the (64 L.J. P. 15), 20, 23, iv.

Lumley v. Ravenscroft, 120, i.

McANDREW V. NORRIS, 103, i.

McDermott, e. p.; re Boyd (72 L.T. 848; 64 L.J. Q.B. 439), 20, 65, ii.

M'Hay v. Universal Stock Exchange, 114, iii.

Manchester (Mayor of) v. McAdam, 117, iv.

Mandleberg, e. p.; re Howell, 97, iv.

Mansion House Association v. G.W.R. (64 L.J. Q.B. 283), 20, 86, i.

— v. —, 116, vi.

— v. —, 116, vi.

L. & S.W.R., 116, v.

Mara v. Browne, 109, i.

— v. —, 122, i.

Marshall v. S. Staffordshire Tramways Co., 121, iv.

— v. Taylor, 108, vii.

Marwick v. Lord Thurlow, 101, ii.

Meredyth v. M. (64 L.J. P. 64.), 20, 74, vi.

Mersey Ry. Co., re, 117, i.

Metcalfe v. Cox, 118, i.

Midgley v. Crowther, 120, v.

M.R. v. Gribble, 117, ii.

— v. Silvester (64 L.J. Ch. 390; 43 W.R. 443), 20, 84, v.

Mills, e. p.; re Walker, 97, iii.

Morgan v. Jackson, 105, i.

Morley v. Rennoldson (72 L.T. 308), 20, 93, iii.

— v. —, 124, iii.

"Morocco Bound" Syndicate v. Harris (64 L.J. Ch. 400; 72 L.T. 415), 20, 70, i.

Mortgage Insurance Co. v. Pound, 116, iii.

Mowbray v. Merryweather, 104, i.

NAPPER V. FANSHAW, 105, v.

Nautik, the (64 L.J. P. 61), 20, 90, i.

Nevill v. Fine Art Publishing Co., 108, iii.

New Oriental Bank, re; e. p. Hong Kong Land Co., 102, ii.

Newman & Co., re, 100, v.

Newton v. Debenture-Holders of Anglo-Australian Land Co.

(L.R. [1895] A.C. 244; 64 L.J.P.C. 57; 72 L.T. 305), 20, 68, iii.

Nicholson v. Harper, 117, vii.

Norris v. Birch (72 L.T. 491), 20, 80, ii.

— v. Craig, 108, ii.

North-Western Bank v. Poynter (64 L.J.P.C. 27), 20, 87, vi.

North Metropolitan Tramway Co. v. L.C.C., 121, v.

OFFICIAL RECEIVER, e. p.; re FOSTER, 97, ii.

— e. p.; re Thurlow (L.R. [1895] 1 Q.B. 724), 20, 64, v.

— e. p.; re Wells, 97, vii.

Omnium Investment Co., re, 101, iv.

Onslow v. M.S. & L.R. (64 L.J. Ch. 355), 20, 85, ii.

O'Neil v. Armstrong, 119, iv.

O'Sullivan v. Thomas (L.R. [1895] 1 Q.B. 698; 64 L.J. Q.B. 398), 20, 73, iii.

- Otway v. O., 124, ii.
 c. p.; *re* O., 98, i.
 Owen v. Cronk (64 L.J. Q.B. 288),
 20, 84, iv.
 PARKINSON v. WAINWRIGHT, 100, ii.
 Payne v. Wilson (64 L.J. Q.B. 328),
 20, 87, iv.
 Phythian v. Baxendale (L.R. [1895]
 1 Q.B. 768; 64 L.J. M.C. 174; 72
 L.T. 465), 20, 74, i.
 Pilbrow v. Shoreditch Vestry (64
 L.J. M.C. 130), 20, 80, i.
 Plumstead Burial Ground, *re*, 104, iii.
 Potter v. Peters, 120, ii.
 Pyle v. P., 108, ii.
 RABBETH v. DONALDSON (64 L.J. Ch.
 465), 20, 71, i.
 Reddaway v. Banham (64 L.J. Q.B.
 321), 20, 91, iii.
 Redgrave v. Lloyds, 111, i.
 Reg. v. Baker, 103, vi.
 — v. Barnstaple Commissioners,
 121, i.
 — v. Durham Justices, 107, v.
 — v. Field, 95, ii.
 — v. Fulwood Local Board, 109, v.
 — v. Huggins (64 L.J. M.C. 149),
 20, 75, iv.
 — v. London Justices, 108, v.
 — v. ———, 112, ii.
 — v. Marylebone Vestry (L.R.
 [1895] 1 Q.B. 771), 20, 71, vii.
 — v. Mead, 110, iii.
 — v. Mills, 110, ii.
 — v. Munslow, 108, v.
 — v. Samuel, 120, vi.
 — v. Slade, 107, iii.
 — v. Titterton, 95, iii.
 — v. Tomlinson (L.R. [1895]
 1 Q.B. 706; 43 W.R. 544), 20,
 71, iii.
 — v. West Riding County Council,
 109, iii.
 — v. West Riding Justices, 107, iv.
 Robb v. Green, 111, iv.
 Roberts v. Plant (64 L.J. Q.B. 347),
 20, 84, iii.
 Robins v. Gray, 107, i.
 Robson v. Smith, 100, iii.
 Roddick v. Indemnity Mutual Marine
 Insurance Co., 118, viii.
 Royle v. Harris (L.R. [1895] P. 163;
 72 L.T. 474), 20, 94, iii.
 ST. GEORGE'S LOCAL BOARD v. BALLARD
 (L.R. [1895] 1 Q.B. 702; 72 L.T.
 345), 20, 77, iv.
 St. John Pendlebury (Vicar of) v.
 Parishioners, 104, iv.
 St. Thomas Floating Dock Co., *re*
 (L.R. [1895] 1 Ch. 691; 64 L.J.
 Ch. 361), 20, 68, iv.
 San Paulo Railway Co. v. Carter
 (64 L.J. Q.B. 379), 20, 86, v.
Satanita, the, 118, v.
 Saunders, *c. p.*; *re* S., 97, v.
 Sawyer v. Goddard (64 L.J. Ch. 341),
 20, 91, iv.
 — v. ———, 122, iv.
 Scholfield v. Lord Londesborough
 (64 L.J. Q.B. 293), 20, 66, iii.
 Scott v. Alvarez, 123, i.
 — v. Baring, 107, vi.
 Sculcoates Union v. Hull Docks
 Co. (L.R. [1895] A.C. 136), 20,
 48, vii.
 Seaton v. Deerpur, 98, iii.
 Self v. Hove Commissioners (L.R.
 [1895] 1 Q.B. 685), 20, 78, ii.
 Semet and Solway, *re* (64 L.J. P.C.
 41), 20, 48, v.
 Shackell v. Chorlton (64 L.J. Ch. 355),
 20, 69, iii.
 Shenton v. Smith (L.R. [1895] A.C.
 229), 20, 71, v.
 Sherras v. De Rutzen, 108, vi.
 Shoreditch Vestry v. L.C.C., 114, i.
 Singleton v. Ellison (64 L.J. M.C.
 123; 43 W.R. 426), 20, 71, ii.
 Smith v. Molson's Bank, 96, iv.
 — v. Wallace (43 W.R. 539), 20,
 91, vi.
 Solicitor, a, *re*, 119, vii.
 Stafford v. Dyer, 119, iii.
 Stevens v. Green, 122, iii.
 Steward v. England, 109, ii.
 Stockton Football Club v. Gaston
 (72 L.T. 490), 20, 82, iv.
 Strachan, *re* (64 L.J. Ch. 321), 20,
 78, v.
 Strapp v. Bull, 101, iii.
Strathgarry, the (L.R. [1895] P. 264;
 64 L.J. P. 59), 20, 90, iv.
 Studham v. Stanbridge, 108, iv.
 TARN v. EMMERSON (L.R. [1895] 1 Ch.
 652; 64 L.J. Ch. 468; 72 L.T. 406),
 20, 68, ii.
 Taunton v. Sheriff of Warwickshire,
 100, iv.
 Taylor v. Gates, 115, i.
 Theatrical Trust, *re*, 101, vi.
 Timmis v. Albiston, 117, iii.
 Townsend's Contract, *re* (L.R. [1895]
 1 Ch. 716; 64 L.J. Ch. 354; 72
 L.T. 321), 20, 92, i.

INDEX OF CASES.

V.

- Trego v. Hunt (64 L.J. Ch. 392), 20, 81, iii.
- Trench v. Hamilton (64 L.J. Ch. 365; 43 W.R. 461), 20, 93, iv.
- Trow v. Perpetual Trustee Co. (L.R. [1895] A.C. 264; 64 L.J. P.C. 49), 20, 93, v.
- Trollope v. London Building Trades' Federation, 121, ii.
- Troup, *e. p.*; *re* Hawkins (64 L.J. Q.B. 373), 20, 65, vi.
- Turner v. Green, 120, iv.
- Tynwald, *the* (43 W.R. 509), 20, 56, i.
- VOWLES v. COLMER, 110, iv.
- WARREN v. W., 117, vi.
- Wega, *the* (72 L.T. 332), 20, 88, iii.
- Wellby v. Still (64 L.J. Ch. 495), 20, 56, viii.
- West Ham Corporation v. G.E.R., 116, iv.
- Guardians v. Bethnal Green Churchwardens (64 L.J. M.C. 151; 72 L.T. 847; 43 W.R. 419), 20, 81, vi.
- v. Cardiff Union, 114, ii.
- Wharton v. Masterman, 124, i.
- White v. Mellin (L.R. [1895] A.C. 154; 72 L.T. 334), 20, 76, vi.
- Wilkins, *e. p.*, 103, vii.
- Williams v. W. (64 L.J. Ch. 349; 72 L.T. 324), 20, 92, vi.
- Wilmer v. McNamara, 101, i.
- Winstead, *the* (L.R. [1895] P. 170; 64 L.J. P. 51), 20, 88, v.
- Wirral Highway Board v. Newell (L.R. [1895] 1 Q.B. 827; 72 L.T. 535; 64 L.J. M.C. 181), 20, 73, vi.
- Wolverhampton (Mayor) v. Salop County Council, 105, vi.
- Woodroffe v. Moody (43 W.R. 462), 20, 81, ii.
- Wylie v. Moffat, 111, xi.
- YEADON WATERWORKS Co. v. BINNS, *re*, 102, vi.
- Yorkshire Life Assurance Co. v. Gilbert, 115, iii.
- Young v. Holloway (64 L.J. P. 55; 43 W.R. 429), 20, 94, iv.
- ZELMA GOLD MINING Co. v. HOSKINS (64 L.J. P.C. 45), 20, 67, vi.

Quarterly Digest

OF

ALL REPORTED CASES,

IN THE

Law Reports, Law Journal Reports FOR MAY,
JUNE, AND JULY, 1895, AND IN THE
Law Times, and Weekly Reporter FOR MAY AND JUNE.

By C. H. LOMAX, M.A., of the Inner Temple,
Barrister-at-Law.

Administration:—

- (i.) **Ch. D.**—*Marshalling—Debts—Legacies—Charge on Real Estate.*—A testator gave one pecuniary legacy, directed payment of his debts and funeral expenses, and gave all his personalty and realty to his executors upon trust for conversion. The personal estate was insufficient to pay the legacy after payment of debts and funeral and testamentary expenses. *Held*, that the legatee was entitled to have the assets marshalled so as to stand in the shoes of the creditors against the proceeds of the realty.—*Brothwood v. Keeling*, L.R. [1895] 2 Ch. 208; 64 L.J. Ch. 494; 43 W.R. 500.

Adulteration:—

- (ii.) **Q. B. D.**—*Analysis—Evidence—Fraud—Sale of Food and Drugs Act, 1875, s. 6.*—The justices may apply their own knowledge of the subject-matter of a complaint, and, acting thereon, may discharge a defendant as guilty of only a trifling offence without hearing evidence in contradiction of the analyst's certificate, although technically they ought to hear such evidence. Fraud is no element of an offence under the Act, but in considering the gravity thereof, the absence of fraud may be taken into account.—*Reg. v. Field*, 64 L.J. M.C. 158.
- (iii.) **Q. B. D.**—*Penalty—Application of—Metropolitan Police Courts Act, 1839, s. 47—Sale of Food and Drugs Act, 1875, s. 26—Margarine Act, 1887, ss. 11, 12.*—The inspector of an authority who had appointed an analyst prosecuted to conviction before a Metropolitan police magistrate an offender against the Margarine Act, 1887; a penalty was imposed, but no directions were given as to its application. *Held*, that it must be applied under sect. 26 of the Act of 1879; that that section abrogated sect. 47 of the Act of 1839, so far as it applied to penalties

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recovered on prosecutions instituted by such officers, and that the penalty was payable to the inspector of the authority, and not to the receiver of the Metropolitan police.—*Reg. v. Titterton*, L.R. [1895] 2 Q.B. 61; 64 L.J. M.C. 202.

- (i.) **Q. B. D.**—*Written Warranty—Sale of Food and Drugs Act, 1875, s. 25.*—Neither an invoice containing a description of an article sold, nor a label affixed to such article containing the words "warranted genuine and pure," can of itself constitute a written warranty within the meaning of the section mentioned.—*Iorns v. Von Tromp*, 64 L.J. M.C. 170; 72 L.T. 499.

Arbitration:—

- (ii.) **C. A.**—*Costs—Lands Clauses Act, 1845, s. 34—Offer—Withdrawal of.*—Promoters, a municipal corporation, made an offer for land which was refused, and arbitrators were appointed. On the day that the umpire accepted his appointment the offer was withdrawn by the town clerk, and the vendor assented to the withdrawal. The umpire awarded a sum less than the amount offered. Afterwards the corporation passed a resolution in ratification of the offer. *Held*, that the corporation must pay the costs of the arbitration.—*Foster v. Mayor, &c., of Sheffield*, 72 L.T. 549.
- (iii.) **C. A.**—*Step in Proceedings—Arbitration Act, 1889, s. 4.*—The defendants in an action on a contract which contained a general submission of all disputes to arbitration, obtained an order for an extension of time for delivering their defence. *Held*, that this was a "step in the proceedings," and that they could not afterwards obtain an order to stay.—*Bartlett v. Ford's Hotel Co.*, L.R. [1895] 1 Q.B. 850; 64 L.J. Q.B. 452; 72 L.T. 529; 43 W.R. 453.

Banker:—

- (iv.) **P. C.**—*Canada—Bank Act, 18 Vict., c. 202—Trust—Transfer—Notice.*—A bank registered an absolute transfer of its shares which had been executed by the trustees of a will to a residuary legatee, regardless of a provision in the will requiring the substitution of the legatee's lawful issue at his death. *Held*, that the registration was not wrongful unless with actual knowledge of a breach of trust. *Held*, also, that notice that the shares were held in trust; possession of a copy of the will; and the facts that transfers of shares by the same trustees to other legatees contained notice of substitution; that the president of the bank was a trustee of the will, and that the law agent of the bank was law agent of the trustees, did not affect the bank with notice of the particular trusts sought to be enforced.—*Smith v. Molson's Bank*, L.R. [1895] A.C. 270; 64 L.J. P.C. 51.

Bankruptcy:—

- (v.) **Q. B. D.**—*Act of—Goods Held by Sheriff—Computation of Time—Bankruptcy Act, 1890.*—In computing the time during which the Sheriff has been in possession for the purpose of establishing an act of bankruptcy, the day on which he went into possession must be excluded, and the day on which he went out of possession must be included.—*E. p. Hasluck; in re North*, 72 L.T. 468.
- (vi.) **Q. B. D.**—*Assets—Money paid to prevent Seizure—Bankruptcy Act, 1890, s. 11, sub-s. 2.*—Where money has been paid to an execution creditor to prevent a seizure he is entitled to retain it as against the trustee. The defendant, a county court high bailiff, was entrusted by the plaintiff with a warrant to levy execution. He seized, but withdrew under an arrangement with the debtor. The debtor then absconded. The bailiff obtained the key of the premises, but gave it

to the debtor's father on a promise by him to pay the debt, which was done. The plaintiff did not hear of the payment till some time after. The bailiff had notice within fourteen days after such payment of a bankruptcy petition, upon which a receiving order was made. He paid the money to the official receiver. *Held*, that he was not justified in doing so, and that he was liable to the plaintiff.—*Bower v. Hett*, L.R. [1895] 2 Q.B. 51; 43 W.R. 557.

- (i.) **C. A.**—*Bankruptcy Notice*—"Final Judgment."—An order for the payment by the respondent of the costs of a motion by a trustee in bankruptcy under sect. 102 of the Bankruptcy Act, 1883, is not a "final judgment" within sect. 4, sub-sect. 1 (g), of the Act.—*In re A Bankruptcy Notice*, 64 L.J. Q.B. 429; 72 L.T. 312.
- (ii.) **Q. B. D.**—*Deed of Assignment—Remuneration of Trustee*.—A trustee of a deed of assignment has no right to remuneration out of the estate if the assignor becomes bankrupt within three months; but if the official receiver considers that he has rendered valuable services he may, in his discretion, allow him some remuneration.—*E. p. Official Receiver*; *in re Foster*, 72 L.T. 364; 43 W.R. 428.
- (iii.) **Q. B. D.**—*Disclaimer—Mortgage of Lease—Vesting Order—Terms—Bankruptcy Acts*, 1883, s. 55; 1890, s. 13.—Where a lease has been disclaimed and application is made for a vesting order, the Court will, as a general rule, make such order upon the terms that the person in whose favour it is made shall take upon himself the burden of the unperformed obligations, both past and future, to which the bankrupt was liable at the date of the petition. But under special circumstances the Court may modify such terms so as to make the person in whose favour the vesting order is made subject only to the same obligations as if the lease had been assigned to him at the date of the petition.—*E. p. Mills*; *in re Walker*, 72 L.T. 330.
- (iv.) **Q. B. D.**—*Distress for Rent—Apportionment*.—A bankrupt had paid his rent up to the June quarter-day, and a receiving order was made on September 1st. *Held*, that the landlord was entitled at the expiry of the Michaelmas quarter to distrain for the whole rent for that quarter.—*E. p. Mandleberg*; *in re Howell*, L.R. [1895] 1 Q.B. 844; 64 L.J. Q.B. 454; 72 L.T. 472; 43 W.R. 447.
- (v.) **Q. B. D.**—*Jurisdiction—Pension Inalienable—Indian Law—Discretion—Bankruptcy Act*, 1883, s. 53, sub-s. 2.—There is jurisdiction to order payment to the trustee of an Indian pension of the bankrupt, which by Indian law is inalienable, but as a matter of discretion such order ought not to be made.—*In re Saunders*; *e. p. Saunders*, L.R. [1895] 2 Q.B. 117.
- (vi.) **Q. B. D.**—*Married Woman—Married Women's Property Act*, 1882, s. 1 (5).—A married woman may be made bankrupt in respect of a business carried on by her, but entirely managed by her husband, if he has no control over the money in, or assets of the business.—*In re Edwardes*; *e. p. Edwardes*, 43 W.R. 509.
- (vii.) **Q. B. D.**—*Official Receiver—Duties as Interim Receiver—Liability for Costs—Bankruptcy Rules*, 1886, r. 839.—The official receiver when acting as interim receiver ought not to realise or deal with the estate except to protect it or to dispose of perishable goods, and if extraordinary measures out of the usual practice have to be adopted he should consult the Board of Trade, and, if necessary, apply to the Court. An official receiver, acting as interim receiver, instructed an auctioneer to pay off, and take an assignment of, a bill of sale given by the debtor. The trustee sued the auctioneer to test the validity of the bill of sale, and the latter brought in the official receiver as third party. The action was dismissed with costs. *Held*, that under the

implied indemnity given by the official receiver he must pay the auctioneer the difference between his solicitor and client costs and the party and party costs which he received, and that he was entitled to receive out of the estate the amount so paid and also his own costs.—*E. p. Official Receiver; in re Wells and Croft*, 72 L.T. 359.

- (i.) **C. A.—Petition—"Sufficient Cause" for Dismissal—Bankruptcy Act, 1883, s. 7, sub-s. 3.**—It is a "sufficient cause" for dismissing a bankruptcy petition that the petitioning creditor has asked the debtor to give him money as the price of his consent to an adjournment; or that the debtor's only asset is a life interest forfeitable on bankruptcy.—*E. p. Otway; in re Otway*, 72 L.T. 452.
- (ii.) **Q. B. D.—Refusal of Discharge—Felony Connected with the Bankruptcy—Bankruptcy Act, 1890, s. 8.**—When a person embezzles money and afterwards becomes bankrupt, the fact that his employer proves for the amount embezzled, does not cause the offence to be a "felony connected with the bankruptcy" within the meaning of the section.—*E. p. Board of Trade; in re Hedley*, L.R. [1895] 1 Q.B. 923; 64 L.J. Q.B. 460; 72 L.T. 470; 43 W.R. 464.
- (iii.) **C. A.—Scheme of Arrangement—Judgment—Rejection of Proof—Release—Bankruptcy Act, 1883, ss. 18, 37.**—A scheme of arrangement accepted and approved releases the debtor from a judgment debt, as being a debt "provable in bankruptcy," although the judgment creditor's proof under the scheme has been rejected upon the ground that there was no sufficient consideration for the judgment.—*Seaton v. Deerhurst*, L.R. [1895] 1 Q.B. 853; 64 L.J. Q.B. 430; 72 L.T. 453; 43 W.R. 436.
- (iv.) **Q. B. D.—Trustee appointed by Board of Trade—Duties—Default—Bankruptcy Act, 1883, ss. 74, 75.**—A trustee appointed by the Board of Trade cannot, without the sanction of the Board, give a personal indemnity to his agent against the consequences of selling goods seized for rent due to the bankrupt's estate; and when such goods are sold it is the statutory duty of the trustee to require that the proceeds should be paid at once to the Bankruptcy Estates Account. The trustee and his guarantors are liable for any loss occasioned by his default herein.—*Board of Trade v. Provident Clerks and General Guarantee Association*, 72 L.T. 562.
- (v.) **Q. B. D.—Secured Creditor—Proof by—Notice to Redeem Securities.**—A secured creditor may lump together the securities he holds against his debts and assess them as a whole; and if the trustee do not, within six months after receiving notice in writing from the creditor, elect whether he will redeem such securities as a whole, or require them to be realised, they will vest in the creditor. *Quere*, whether before the expiration of the six months the creditor or the trustee has not the right to have the securities assessed separately.—*E. p. Logan; in re Smith*, 72 L.T. 362.

Bill of Sale:—

- (vi.) **Q. B. D.—Address of Grantor—Bills of Sale Act, 1882—Form in Schedule.**—The grantor of a bill of sale carried on business at one address, resided at a second, and was a member of a club where letters might be sent to him with the certainty that they would reach him; his address given in the bill of sale was that of the club. *Held*, that the bill of sale was not void for deviation from the statutory form.—*Dolcini v. Dolcini*, L.R. [1895] 1 Q.B. 898; 64 L.J. Q.B. 427; 43 W.R. 542.
- (vii.) **Q. B. D.—Validity—Statutory Form—Covenant to Produce Receipt for Rent.**—A bill of sale contained a covenant by the grantor to produce his last receipt for rent, rates, and taxes, no demand in writing being

required, and a proviso that the goods assigned should not be liable to seizure for any cause other than those specified in the Bills of Sale Act, 1882, sect. 7. *Held*, that it was not void for deviation from the statutory form.—*Cartwright v. Regan*, L.R. [1895] 1 Q.B. 900.

Building Society :—

- (i.) **C. A.**—*Rule—Construction.*—Decision of Ch. D. (see Vol. 20, p. 66, v.) affirmed.—*Botten v. City and Suburban Building Society*, 73 L.T. 875.

Burial Ground :—

- (ii.) **Ch. D.**—*Site of Church—Sale of.*—The site of a church in which interments have taken place which vests in the Ecclesiastical Commissioners under a scheme made under the Union of Benefices Act, 1860, may be sold by them for building purposes, and such power is not affected by the Amendment Act of 1871. The Disused Burial Grounds Act, 1884, sect. 5, is not confined to sales made before the passing of that Act.—*In re Ecclesiastical Commissioners and New City of London Brewery Co.*, L.R. [1895] 1 Ch. 702; 72 L.T. 481; 43 W.R. 457.

Colonial Law :—

- (iii.) **P. C.**—*Canada—Attorney-General—Power to discontinue Action.*—When the Attorney-General of Quebec has taken proceedings upon an information against a corporation for a violation of law, he is sole *dominus litis*, and may discontinue the suit without leave of the Court, and a mandamus will not lie at the instance of the relators to compel him to proceed. A new Attorney-General cannot retract a discontinuance entered by his predecessor. The words in Art. 997 of the Code of Procedure, which empower the Attorney-General to take action when a corporation exercises any power which does not belong to it, do not include every act which is contrary to law, but only such acts as are done in the assertion of some special power, franchise, or privilege. The General Railway Act by sect. 12 gives the local authority an absolute discretion to sanction the construction of a permanent line of railway along a public road.—*Casgrain v. Atlantic and North-Western Railway*, L.R. [1895] A.C. 282; 72 L.T. 369.
- (iv.) **P. C.**—*Canada—Ecclesiastical Law—New Parish—Decree of Archbishop—Debt of Parish.*—When the Archbishop has made a decree in accordance with the Statutes of Quebec for the erection of a new parish, which decree is admitted to be valid for all ecclesiastical purposes, the Court cannot inquire into the regularity of the proceedings by which the Archbishop was moved to make the decree; and such decree is a sufficient foundation for proceedings to obtain civil recognition of the new parish. Proceedings before the commissioners of a diocese in accordance with the statutory provisions, with a view to the civil recognition of a new parish, are not subject to the review of the Court. A debt of the "Fabrique" is not a debt of the parish within sect. 3,380 of the Revised Statutes, so as to prevent the division of the parish until it is paid.—*Alexandre v. Brassard*, L.R. [1895] A.C. 801; 72 L.T. 366.
- (v.) **P. C.**—*New South Wales—Purchase of Crown Lands—Crown Lands Alienation Acts, 1861, s. 22; 1884, s. 42—"Rights accrued"*—*Reservation of.*—A conditional purchase of Crown lands by a holder in fee simple of adjoining lands under the earlier section does not make such purchaser the holder of an original conditional purchase within the meaning of the later section, and entitle him to make additional conditional purchases of adjoining Crown lands under that section. Where a statute repeals a previous statute with a reservation of "all rights accrued" thereunder, the mere right existing in any person to take

advantage of the repealed enactment without any act done towards availing himself of that right cannot be deemed a "right accrued" within the meaning of the reservation.—*Abbott v. Minister for Lands*, 72 L.T. 402.

Company:—

- (i.) **Ch. D.—Blank Transfer—Authority of Broker—Inchoate Title.**—The plaintiff instructed his broker to sell shares, and delivered to him the certificate and a blank transfer. The articles of the company did not require a deed. The broker deposited the documents with the defendant as a security for his own debt. The defendant afterwards filled up the transfer and sent it in for registration. The company had no notice of any invalidity, and no power to refuse registration. The registration not being completed, the plaintiff sued to restrain it and to establish his title. *Held*, that as the defendant had acquired no title as against the plaintiff he had no inchoate title which was capable of being perfected by registration.—*Fox v. Martin*, 64 L.J. Ch. 473.
- (ii.) **Ch. D.—Debenture-holders' Action—Declaration of Charge—Sale—Consent—R.S.C., 1883, O. li., r. 1b.**—The plaintiff was holder of all the first mortgage debentures of a company, and sued to realise his security. The action was set down as a short cause, and the plaintiff asked for a declaration of charge and an order for immediate sale of a colliery, the property of the company. *Held*, that the declaration should be made, but that the plaintiff could not sue on behalf of all the debenture-holders, and that the order for sale could not be made without the consent of a person not a party who held some second debentures.—*Parkinson v. Wainwright & Co.*, 72 L.T. 485; 64 L.J. Ch. 498; 48 W.R. 420.
- (iii.) **Ch. D.—Debenture—Floating Security—Garnishee Order.**—The holder of a debenture, which is only a floating security while the company carries on business, cannot, if the company has not been wound up and a receiver appointed, require that a particular debt shall be paid to him and not to the company; and, *a fortiori*, if a garnishee order absolute has been obtained attaching such debt, the garnishee may pay it to the judgment creditor in spite of such notice. Words in a debenture prohibiting a company from creating any prior "charge" are to be read strictly, and do not extend to defeat the rights obtained under a garnishee order.—*Robson v. Smith*, L.R. [1895] 2 Ch. 118; 64 L.J. Ch. 457; 72 L.T. 559.
- (iv.) **Ch. D.—Debentures — Floating Security — Execution Creditors — Priority.**—The sheriff had seized goods of a company on behalf of execution creditors, and was about to sell them, when the plaintiff, who held debentures charging all the assets of the company as a floating security, paid out the sheriff under protest, and gave him notice not to part with the money. *Held*, that as the money had not been handed over the equity of the plaintiff was not displaced. The money was, therefore, ordered to be paid to a receiver appointed in a debenture-holders' action.—*Taunton v. Sheriff of Warwickshire*, L.R. [1895] 1 Ch. 734; 72 L.T. 460.
- (v.) **C. A.—Director—Misfeasance—Presents to Directors—Consent of Shareholders—"Private" Company.**—Directors cannot make to themselves or each other presents out of the company's assets unless authorised by the rules, or by the shareholders at a properly convened meeting. N., the chairman of a company, of which nearly all the shares were held by his family, purchased on behalf of the company a building agreement for £16,000. He sold it to the company for £26,000; £7,000 of this represented the cost of acquiring the contract, but the £23,000 was profit to N. He also spent £3,500 out of the company's

assets in decorating his own house. The shareholders knew of these transactions. *Held*, in the winding-up, that N. was not liable for the £7,000, but was liable for the £3,000 and the £3,500.—*In re Newman & Co.*, L.R. [1895] 1 Ch. 674; 64 L.J. Ch. 407; 43 W.R. 483.

- (i.) **Ch. D.—Dividends—Payable out of Profits—Depreciation of Capital.**—The articles provided that no dividends should be paid except out of profits arising out of the business. The profit and loss account of the year showed a balance of profit, but the value of the assets, including goodwill, had depreciated. *Held*, that the company was not bound to make good this depreciation, being a loss of fixed capital, out of profits before paying a dividend.—*Wulmer v. McNamara & Co.*, L.R. [1895] 2 Ch. 245; 72 L.T. 552; 43 W.R. 519.
- (ii.) **Ch. D.—Practice—Debenture-holder's Action—Declaration of Charge.**—A declaration of charge may be inserted in the judgment in a debenture-holder's action, but after a winding-up order such declaration will not be made without the consent of the official receiver and liquidator.—*Marwick v. Lord Thurlow*, L.R. [1895] 1 Ch. 776; 72 L.T. 463; 43 W.R. 493.
- (iii.) **C. A.—Receiver and Manager—Indemnity—Debentures—Priority.**—A company with some unfinished building contracts was in difficulties. A debenture-holder's action was commenced and a winding-up petition presented. By a consent order on the petition it was ordered that to complete the contracts the plaintiff in the action and the unsecured creditors should raise £5,000 to be a first charge in priority to the debentures, that the unsecured creditors should have second debentures, and that two receivers and managers should be appointed, but that the company should incur no further liabilities. £4,250 was accordingly raised, but the receivers incurred further liabilities in completing the contracts. *Held*, that they were entitled to indemnity out of the assets in priority to the persons who had advanced the £4,250, as well as to the debenture-holders.—*Strapp v. Bull, Sons & Co.*, L.R. [1895] 2 Ch. 1; 72 L.T. 514.
- (iv.) **Ch. D.—Reduction of Capital—Evidence—Companies Acts, 1867; 1877; 1890.**—On a petition for reduction of capital or alteration of the memorandum, a copy of the memorandum and articles, and the original minute-book of the proceedings of general meetings, should be made exhibits to the affidavits in support of the petition. Where the reduction is effected by cancelling capital which has not been paid-up in cash, it must be proved that the same was issued pursuant to a contract duly filed.—*In re Omnium Investment Co.*, L.R. [1895] 2 Ch. 127.
- (v.) **C. A.—Unregistered Building Society—Winding-Up and Vesting Order—Sale by Liquidator.**—Decision of Ch. D. (see Vol. 20, p. 68, v.) affirmed.—*In re Bowling and Welby's Contract*, 64 L.J. Ch. 427; 72 L.T. 411; 43 W.R. 417.
- (vi.) **Ch. D.—Winding-up—Contributory—Payment for Shares otherwise than in Cash—Companies Act, 1862, s. 25.**—Under a registered contract shares may be paid for otherwise than in cash. But the consideration must be the equivalent of cash. If the contract makes it manifest that the consideration is less than the nominal cash value the allottee is liable to pay the balance. But the Court will not consider each contract and determine whether the price given is reasonable, or whether the consideration has a cash value equivalent to the nominal amount of the shares, unless there is evidence to impeach the value of the consideration as stated in the contract.—*In re Theatrical Trust; Chapman, Brandon, and Greville's Cases*, L.R. [1895] 1 Ch. 771; 64 L.J. Ch. 488; 72 L.T. 461; 43 W.R. 553.

- (i.) **Ch. D.—Winding-up—Costs given against Liquidator—Immediate Payment.**—A. obtained an order for the removal of his name from the list of contributories, with costs to be paid by the liquidators out of the assets. The liquidator refused to make immediate payment, as the costs of the winding-up had not been paid. *Held*, that the matter should be referred to Chambers, and that if there was a sufficient sum in hand to warrant payment of his costs to A., he should have them at once; if there was not such a sum there could be no order for immediate payment, but, even in that case, the right to payment could not be postponed indefinitely.—*In re London Metallurgical Co.*, L.R. [1895] 1 Ch. 758; 64 L.J. Ch. 442; 72 L.T. 421; 43 W.R. 476.
- (ii.) **Ch. D.—Winding-up—Lease—Future Rent—Claim for.**—Where at the date of winding-up a company is lessee of premises for an unexpired term of years, the lessor may prove for the amount of rent then due, and enter a claim for the full amount of rent which will become due.—*In re New Oriental Bank Corporation; e. p. Hong Kong Land Company*, L.R. [1895] 1 Ch. 753; 64 L.J. Ch. 439; 72 L.T. 419; 43 W.R. 523.
- (iii.) **C. A.—Winding-up—Misfeasance—Profits—Auditors—Duties of.**—Decision of Ch. D. (see Vol. 20, p. 68, vii.) affirmed.—*In re London and General Bank*, L.R. [1895] 2 Ch. 166; 43 W.R. 481.
- (iv.) **C. A.—Winding-up—Petition—Debt due under Agreement with Voluntary Liquidator—Sale of Assets by Liquidator—Companies Act, 1862, ss. 95, 133.**—A debt due from a company under an agreement between it and its voluntary liquidators and another person is sufficient to support a winding-up petition. The S. company passed special resolutions for voluntary winding-up, the liquidators being authorised to transfer the assets and liabilities to the U. company. The liquidators agreed with the U. company that the latter should pay the debts of the S. company, and that the amount so paid, so far as it was not covered by the proceeds of realising the assets, was to be treated as a debt due to the U. company, and that calls should be made upon the shareholders of the S. company to make up the deficiency. *Held*, that the liquidators had power to enter into the agreement.—*In re Bank of South Australia*, L.R. [1895] 1 Ch. 578; 64 L.J. Ch. 397.
- (v.) **Ch. D.—Winding-up—Preference Shareholders—Arrears of Dividend—Profits.**—A sum of money standing to the revenue account of a company at the date of the commencement of the winding-up, and representing net profits earned to that date, is applicable to the payment of arrears of dividend due at that date to preference shareholders, in priority to the payment of a deficit on the capital account and of the costs of the liquidation.—*Bishop v. Smyrna and Cassaba Railway Co.*, L.R. [1895] 2 Ch. 265.

Contract:—

- (vi.) **Q. B. D.—Building—Completion—Penalty—Proviso for Re-entry—Assignment.**—B. contracted with the company to construct works by a certain date, and it was provided that a penalty for each day's delay might be deducted out of the retention money, and also that if B. became bankrupt or insolvent, the company might terminate the contract, but without affecting the liability of B. in other respects than as regarded the performance of the contract under his direction. The work was not completed in the specified time as extended by agreement. B. became insolvent and the company re-entered. B. then assigned the contract to W., and it was agreed between the company and W. that the latter should complete the works in accordance with the original contract. *Held*, that the company might deduct the penalties for delay from the retention money as against W.—*In re Yeardon Waterworks Co. and Binns and Wright*, 72 L.T. 538.

- (i.) **Ch. D.**—*Consideration of Marriage—Statement of—Statute of Frauds.*—To satisfy the statute a contract made in consideration of marriage should state the consideration so clearly that a person of average intelligence can understand that the marriage is the only consideration.—*McAndrew v. Norris*, 72 L.T. 585; 43 W.R. 538.

Conversion:—

- (ii.) **Ch. D.**—*Devise of Land—Codicil—Lease with Option to Purchase—Exercise of Option.*—A testator, by will dated in 1886, devised freehold lands. By a codicil, in 1890, he confirmed his will with some modifications which did not affect the said lands. By an indenture of even date with the codicil he leased the lands for five years with an option to the lessee to purchase during the term. The lessee exercised his option after the testator's death. *Held*, that the devisees of the lands were entitled to the proceeds of sale.—*Pyle v. Pyle*, L.R. [1895] 1 Ch. 724; 64 L.J. Ch. 477; 72 L.T. 327; 43 W.R. 420.

Copyright:—

- (iii.) **C. A.**—*Sporting Paper—Selection of Horses.*—Decision of Ch. D. (see Vol. 20, 39, iii.) affirmed.—*Chilton v. Progress Printing and Publishing Co.*, L.R. [1895] 2 Ch. 29; 72 L.T. 442; 43 W.R. 456.

County Court:—

- (iv.) **Q. B. D.**—*Costs—Interpleader—"Subject-Matter"—County Court Rules*, 1889, *Order L.A.*, r. 12—*Higher Scale of Costs*, Col. C.—The claimant in interpleader proceedings to try the right to goods seized in execution on a county court judgment, paid £36 into Court to meet the amount in respect of which execution was issued and all costs. The judge decided that the claimant was entitled to all the goods seized and £10 damages, with costs, and that the value of the goods was £51. *Held*, that the "subject-matter" of the proceeding was the amount (plus the damages) found by the judge to be the value of the goods, and not the amount (plus the damages) paid into Court, so that the claimant was entitled to have his costs taxed according to Col. C. of the higher scale.—*Studham v. Stanbridge*, L.R. [1895] 1 Q.B. 870; 43 W.R. 543.

Criminal Law:—

- (v.) **C. C. R.**—*Indictment—Defamatory Libel—Necessary Averment.*—An indictment for unlawfully writing and publishing a defamatory libel omitted to allege that it was published maliciously. *Held*, that the indictment was good, for on proof of the publication the legal inference, until rebutted, was that it was published maliciously, and the allegation that the publication was malicious was therefore not a necessary averment.—*Reg. v. Munslow*, L.R. [1895] 1 Q.B. 758; 64 L.J. M.C. 138; 72 L.T. 301; 43 W.R. 495.
- (vi.) **C. C. R.**—*Perjury—Materiality.*—A defendant charged with selling beer without a licence falsely swore that when previously charged with a similar offence he had not authorised a plea of guilty to be put in, and that such plea had been put in without his knowledge and against his will. *Held*, that as the statements affected his credit as a witness they were material, and that he was rightly convicted of perjury.—*Reg. v. Baker*, L.R. [1895] 1 Q.B. 797; 64 L.J. M.C. 177.
- (vii.) **Q. B. D.**—*Sufficiency of Description of Offence—Conspiracy, &c., Act*, 1875, s. 7.—W. was convicted under the above section and sentenced to imprisonment. The commitment stated that he had been charged for that he, "with a view to compel one T. to abstain from working as a

shoe finisher," did unlawfully, &c., follow him about, &c. *Held*, that the commitment sufficiently expressed the offence charged.—*E. p. Wilkins*, 72 L.T. 567.

Damages:—

- (i.) **Q. B. D.—Contract—Breach—Remoteness.**—The plaintiff contracted to discharge cargo from the defendant's ship, the defendant to supply all necessary and proper cranes, chains, &c. He in breach of his agreement supplied a defective chain, which broke when in use, whereby one of the plaintiff's men was injured. The defect might have been discovered by the plaintiff by the exercise of reasonable care. The man sued the plaintiff, who admitted liability, and paid damages, which he now sought to recover from the defendant. *Held*, that the injury to the man was the natural consequence of the defendant's breach of contract; that, as between the plaintiff and the defendant the plaintiff was entitled to rely on the defendant's warranty, and that as he was liable to his workman, he was entitled to recover the sum paid as damages for the defendant's breach of contract.—*Mowbray v. Merryweather*, L.R. [1895] 1 Q.B. 857; 72 L.T. 467; 43 W.R. 528.

Deed:—

- (ii.) **Ch. D.—No Words of Limitation—Money passing as Land.**—A son purported to assign to his father "all his estate and interest whatsoever of and in the property, estate, and effects devised and bequeathed" by a certain will. The son was absolutely entitled to such property subject to the father's life estate. The deed contained no words of limitation or any words of reference which would supply the defect. *Held*, that it failed to pass either the fee simple in the real estate devised by the will (whether the estate was legal or equitable), or certain money in Court, the proceeds of land taken by compulsory purchase which was subject to the will.—*Dearberg v. Letchford*, 72 L.T. 489.

Ecclesiastical Law:—

- (iii.) **Consistory Court of Rochester.—Faculty—Consecrated Ground—Conversion to Secular Use.**—A faculty was asked to allow of a strip of consecrated ground which had been added to a churchyard under the Burials Act, 1852, in which no interments had taken place, and which was closed by order of the Secretary of State, to be added to a public highway. It was alleged that this widening of the highway would be convenient for persons attending the church. *Held*, that the Court had not jurisdiction to authorize the conversion of consecrated ground to secular uses, and that the faculty could not be granted.—*In re Plumstead Burial Ground*, L.R. [1895] P. 225.
- (iv.) **Consistory Court of Manchester.—Figures—Object of Superstitious Reverence.**—A figure of Our Lord is a legal ornament if it is connected with a general design in such a manner as not to be so prominent as to be likely to become an object of superstitious reverence. The faculty for a triptych with painted panels as a reredos surmounted by a figure of Our Lord and other figures was accompanied by a proviso that the triptych should always be open during the hours of Divine service.—*Vicar of St John, Pendlebury v. Parishioners*, L.R. [1895] P. 178.

Fishery:—

- (v.) **Q. B. D.—Licence to Fish with Rod and Line—Fishing with Three Rods.**—H. held a licence to fish "with a rod and line." The approved scale of licence duties was "For each and every rod and line, one shilling." H. fished with three rods and lines at once. *Held*, that he was unlawfully fishing without a licence authorizing him to do so.—*Cambridge v. Harrison*, 64 L.J. M.C. 175; 72 L.T. 592.

Game :—

- (i.) **Q. B. D.**—*Ground Game Act, 1880, ss. 1-3—Assignment of Rights by Occupier.*—A tenant may assign to any person other than his landlord any sporting rights he may have, including his rights to kill ground game.—*Morgan v. Jackson, L.R. [1895] 1 Q.B. 885; 64 L.J. Q.B. 462; 72 L.T. 593; 43 W.R. 479.*

Gaming :—

- (ii.) **Q. B. D.**—*Betting Houses Act, 1853.*—The Act does not apply to the case of members of a *bonâ fide* club using the club premises for the purpose of betting with each other.—*Downes v. Johnson, 43 W.R. 556.*
- (iii.) **P. C.**—*Stock Exchange Transactions—Law of Lower Canada—Civil Code, Art. 1927—Special Leave to Appeal—Costs.*—A contract entered into merely for purposes of speculation is not a "gaming contract" within the article mentioned above. Where a person of small means instructed a stockbroker to buy and sell stock for him, the purchases being made, to the knowledge of the broker, not as an investment but as a speculation, *held*, that the contracts were not "gaming contracts," and that the broker could recover a sum due to him on a balance of accounts. When an appellant obtained special leave to appeal on the ground of the importance and interest of the question involved, the amount at stake being small, he was ordered, though successful in his appeal, to pay the costs of both sides.—*Forget v. Ostigny, L.R. [1895] A.C. 318; 64 L.J. P.C. 62; 72 L.T. 399.*
- (iv.) **Ch. D.**—*Unlawful Gaming.*—The defendant was tenant to the plaintiff of premises under an agreement whereby he agreed "not to permit games of baccarat, hazard, or roulette to be played on the premises, but to use the said premises as a private club only, and so to carry on the club as not to contravene any laws of the land for the time being in force." The defendant permitted to be played on the premises, and took part in, a game of "chemin de fer." *Held*, that this was a form of baccarat, and therefore in the same sense and in the same circumstances, unlawful. *Held*, also, that both forms of the game were prohibited by the agreement.—*Fairtlough v. Whitmore, 64 L.J. Ch. 386; 72 L.T. 354; 43 W.R. 421.*

Garnishee :—

- (v.) **Ch. D.**—*Money in Hands of Sheriff—Judgment for Payment into Court—"Debt or Liability."*—Where money has been ordered to be paid into Court a garnishee order cannot be made attaching a debt to answer the sum so ordered to be paid in. Judgments or orders for payment into Court are not within Order xlv., r. 1. Money in the hands of the sheriff can be attached by garnishee order. The right of the execution creditor to such money is a vested right liable to be divested in the event of a bankruptcy within fourteen days. Costs incurred in an action relating to a fraudulent breach of trust are not a "debt or liability" within sect. 30, sub-sect. 1, of the Bankruptcy Act, 1883.—*Napper v. Funshawe, L.R. [1895] 2 Ch. 217; 43 W.R. 547.*

Highway :—

- (vi.) **Q. B. D.**—*Extraordinary Traffic.*—The carting of coal in carts driven in strings of four or five at a time, there being five journeys a day, and the carts being driven so that they keep the same track, and do not distribute the wear of the road is "extraordinary traffic."—*Mayor of Wolverhampton v. County Council of Salop, 64 L.J. M.C. 179; 43 W.R. 494.*

- (i.) **Q. B. D.**—*Isle of Wight—Highway Commissioners—Local Government Acts, 1888, ss. 11, 12, 22, 100; 1894, s. 25.*—The powers, duties, and liabilities of the Isle of Wight Highway Commissioners have now been transferred to the district councils of the rural districts of the island, and the commissioners have ceased to exist, but the expenses of the highways will still be defrayed by the county council.—*In re Isle of Wight Highway Commissioners*, 72 L.T. 569.

Husband and Wife :—

- (ii.) **Q. B. D.**—*Desertion—Voluntary Separation—Maintenance—Lapse of Time.*—The appellant married the respondent in 1880. Next year a child was born and the respondent went, with the appellant's consent, to her mother's for the confinement. The appellant, during her absence, broke up the home, and took a room in his father's cottage, where she refused to join him on the ground of insufficient accommodation. He afterwards refused to take her back to live with him. *Held*, that the appellant's demand was not unreasonable, and that there was no evidence of desertion to warrant a maintenance order being made in 1894.—*Jones v. Jones*, 48 W.R. 424.
- (iii.) **P. D.**—*Separation Order—Aggravated Assault—Matrimonial Causes Act, 1878, s. 4.*—A husband who has been convicted of an aggravated assault upon his wife is entitled to give evidence on an application by her for a separation order.—*Jones v. Jones*, L.R. [1895] P. 201.
- (iv.) **P. D.**—*Divorce—Unreasonable Delay.*—A wife who had been living apart from her husband under a separation deed sued for a divorce, but the petition was dismissed on the ground of unreasonable delay. She sued in 1894 for restitution of conjugal rights, and obtained a decree, the husband not pleading the separation deed. He did not comply with the decree, and had been guilty of adultery. The wife now claimed a divorce. She could not have proved desertion before the refusal of her husband to resume cohabitation. *Held*, that as there was nothing to shew when the husband became unable or unwilling to use the separation deed as an answer to the restitution suit, it was impossible to say that such suit might have been instituted sooner, and that the wife was therefore not guilty of unreasonable delay.—*Beauclerk v. Beauclerk*, L.R. [1895] P. 220.
- See Revenue*, p. 117.

Injunction :—

- (v.) **Ch. D.**—*Mandatory—Interlocutory—Legal Right.*—The plaintiff was lessee of rooms in a large building, which were demised by the defendant company, together with the use of the staircase, by a lease which contained a covenant for the quiet enjoyment of the rooms together with the use of the staircase. The defendant company asked the plaintiff's consent to an alteration in the staircase, which was refused. They leased the greater part of the house to the defendant M., who in the plaintiff's absence pulled down the staircase. There was access to the rooms by another staircase, which was circuitous and alleged to be inconvenient. *Held*, that the plaintiff had a legal right to the use of the staircase, that a mandatory injunction could be granted at the hearing, and that as there was no reason to suppose that any fresh evidence would be adduced it ought to be granted on an interlocutory application.—*Allport v. Securities Company*, 64 L.J. Ch. 491; 72 L.T. 588.

Innkeeper :—

- (i.) **Q. B. D.**—*Lien*.—A commercial traveller who travelled for the plaintiff went in the course of his business to the defendant's inn. While there the plaintiff sent him some goods for sale, which the defendant knew were the plaintiff's goods. *Held*, that the defendant's lien extended to such goods.—*Robins & Co. v. Gray*, L.R. [1895] 2 Q.B. 78.

Judgment :—

- (ii.) **Ch. D.** — *Charge — Married Woman — Separate Property — Contingent Remainder*—1 and 2 Vict., c. 110, s. 13; 27 and 28 Vict., c. 112, s. 1.—A judgment creditor registered a judgment against a married woman who was entitled for her separate use to a contingent remainder in fee. He claimed to be entitled to a charge. *Held*, that he was not so entitled, for that the latter section applied although the contingent remainder could not be delivered in execution.—*Hood-Barrs v. Cathcart*, 64 L.J. Ch. 461; 72 L.T. 583.

Justices :—

- (iii.) **Q. B. D.**—*Amendment of Conviction—Hard Labour in Default of Distress*.—S. was convicted before the magistrates on an information under the Public Health (London) Act, 1891, for not abating a nuisance, and was fined £10, and was ordered to be imprisoned with hard labour in default of distress. He paid the fine without appealing. *Held*, that the conviction must be quashed as hard labour is not authorized by the Act. He was also convicted under the same Act on another information for not obeying a closing order, and the conviction again imposed hard labour in default of distress. He appealed to Quarter Sessions, who amended the conviction by striking out the words "hard labour," and dismissed the appeal. *Held*, that the decision of Quarter Sessions was right.—*Reg. v. Slade*; *Reg. v. London Justices*, 72 L.T. 568.
- (iv.) **Q. B. D.**—*Appeal to Quarter Sessions—Notice—Time—Summary Jurisdiction Act, 1879, s. 81*.—Notice of appeal from the licensing justices to Quarter Sessions under the Alehouse Act, 1828, should now be given within seven days after the day on which judgment was given.—*Reg. v. Justices of West Riding of Yorkshire*; *e. p. Hawkins*, 64 L.J. M.C. 192.
- (v.) **Q. B. D.**—*Appeal—Recognizance—Summary Jurisdiction Act, 1879, s. 31, sub-s. 2*.—An appellant's recognizance may be fixed and entered into before any court of summary jurisdiction, even though it is done at a court in another county to that in which the order or conviction appealed against was made. The order or conviction, or a copy thereof, need not be produced when the recognizance is entered into.—*Reg. v. Justices of Durham*, L.R. [1895] 1 Q.B. 801; 64 L.J. M.C. 187; 72 L.T. 465; 43 W.R. 423.
- (vi.) **Q. B. D.**—*Jurisdiction—Bonâ Fide Claim of Right*.—The appellant was summoned for that he, being an unauthorised person, did dig and take turf and loam from Banstead Common contrary to one of the bye-laws. It was proved that he was authorised by the bailiff of the lord of the manor, and that the right had been exercised by the lord for some years. The justices convicted him, being influenced by the decision in an action brought by tenants of the manor to restrain the lord from digging up the waste. *Held*, that there was a *bonâ fide* claim of right, which was not obscure or impossible in law, and that the jurisdiction of the justices was ousted.—*Scott v. Baring*, 64 L.J. M.C. 200; 72 L.T. 495.

Landlord and Tenant:—

- (i.) **Q. B. D.—Sub-lease—Implied Covenants for Title—Quiet Enjoyment.**—Defendants having a term of years of which eight years were unexpired, sub-let by indenture to the plaintiff for ten years, acting in good faith but under a mistake. The sub-lease contained no express covenants for title or quiet enjoyment, and did not use the word "demise." *Held*, that in the absence of such word a covenant for title as distinguished from a covenant for quiet enjoyment could not be implied; and that the implied covenant for quiet enjoyment could not enure beyond the termination of the defendants' term, and consequently the plaintiff having been evicted after the end of such term by the superior landlord, could not recover damages against the defendants.—*Baynes & Co. v. Lloyd & Sons*, L.R. [1895] 1 Q.B. 820; 64 L.J. Q.B. 411; 72 L.T. 505; 43 W.R. 524.
- (ii.) **Q. B. D.—Sub-lease—Longer Term than Lease—Reversion by Estoppel.**—B. demised premises to W. for twenty-one years. W. demised them to the defendant for forty years. He afterwards assigned them, subject to the under lease, to the plaintiff. The plaintiff sued the defendant on the covenants in the under lease. *Held*, that assuming that W. had a reversion by estoppel subject to the under lease, that reversion was not purported to be assigned to the plaintiff, and that the right to sue on the covenants was in W. and not in the plaintiff.—*Norris v. Craig*, 64 L.J. Q.B. 432; 43 W.R. 480.

Libel:—

- (iii.) **C. A.—Privilege—Excess of—Malice.**—In the case of a libel published on a privileged occasion, a finding of the jury that there has been "excess of privilege" is immaterial. "Excess of privilege" if meaning that words have been used too strong for the occasion, may be evidence of malice, but malice cannot be inferred from such a finding.—*Nevill v. Fine Art and General Publishing Co.*, L.R. [1895] 2 Q.B. 156; 72 L.T. 525.
- (iv.) **C. A.—Privileged Occasion.**—Borough magistrates ordered the head constable to issue to persons having business before the general annual licensing meeting copies of a report made by him to the magistrates stating the grounds of objection taken to the renewal of licences. *Held*, that the publication of the report was upon a privileged occasion, and that in the absence of actual malice an action would not lie against him in respect of statements contained therein.—*Andrews v. Nott-Bower*, L.R. [1895] 1 Q.B. 888; 72 L.T. 530.

Licensing:—

- (v.) **C. A.—Appeal—Costs—Licensing Justices—Summary Jurisdiction Acts**, 1879, ss. 31, 32; 1884, s. 6.—Licensing justices who, being served with notice of appeal, appear at the hearing and oppose are a "party" within sect. 31 of the Act of 1879. The quarter sessions have a discretion as to costs, and need not order costs to be paid to the licensing justices. *Semble*, that licensing justices who do not make themselves parties to an appeal cannot be deprived of their costs.—*Reg. v. Justices of London*, 43 W.R. 387.
- (vi.) **Q. B. D.—Supply of Liquor to a Constable on Duty—Licensing Act**, 1872, s. 16, sub-s. 2.—The section mentioned does not apply when the licensed person *bonâ fide* believes that the constable is off duty.—*Sherras v. De Rutzen*, L.R. [1895] 1 Q.B. 918; 43 W.R. 526.

Limitations:—

- (vii.) **C. A.—Adjoining Owners—Ditch—Presumption of Ownership—Dispossession.**—The plaintiff and defendant owned adjoining houses. The

gardens were separated by a ditch, on the plaintiff's side of which was a hedge. In 1868 the plaintiff's predecessor laid pipes in the ditch which drained both houses, and then covered it in. The defendant from that time used the surface as part of his garden. But the plaintiff continued to cut his hedge from the defendant's side, and on two occasions opened the ditch to clean out the drains. *Held*, that, assuming that the plaintiff was originally the owner of the ditch, he had lost his ownership by lapse of time, the defendant's acts of ownership having been sufficient to dispossess him. *Quære*, whether the presumption that a ditch belongs to the owner of the adjacent hedge applies to a natural watercourse or only to an artificial ditch.—*Marshall v. Taylor*, L.R. [1895] 1 Ch. 641; 64 L.J. Ch. 416.

- (i.) **Ch. D.—Breach of Trust—Marriage Settlement.**—A marriage settlement of the wife's property provided that the income should be paid to the wife during the joint lives of herself and her husband, and after her death to the husband if he should survive her. There was no express life estate to her in case she should survive. *Held*, that she took a life estate by implication, which was different from her first life estate, and did not fall into possession till her husband's death. Accordingly in an action against the trustees for breach of trust in which they pleaded the Statute, *held*, that it did not begin to run against the wife till her husband's death.—*Mara v. Broune*, L.R. [1895] 2 Ch. 69.
- (ii.) **Ch. D.—Charge on Land—Charge and Land Vested in same Person—Presumption of Payment.**—A testator having by deed charged upon his land a sum of money, which he had covenanted to pay, and which was to be raised after his death, and held upon trusts under which his son was tenant for life, devised the land subject to the charge to his son. The money was never raised nor was any interest paid in respect of it. The son entered and received the rents and profits for more than twelve years. *Held*, that no presumption of payment by the son could be made, and that even if it were made it would not prevent the Statute from running in favour of the testator's residuary personal estate.—*Steward v. England*, L.R. [1895] 2 Ch. 100; 43 W.R. 491.

Local Government:—

- (iii.) **C. A.—Aided Police Force—County Council Contributions.**—Decision of Q. B. D. (see Vol. 20, p. 77, iii.) affirmed.—*Reg. v. West Riding of Yorkshire County Council*, L.R. [1895] 1 Q.B. 806; 64 L.J. M.C. 145; 72 L.T. 520.
- (iv.) **Q. B. D.—Arbitration—Procedure—Local Government Act, 1888, s. 11, sub-s. 3, ss. 63, 87—Arbitration Act, 1889, s. 24.**—Where differences are to be determined by arbitration by the Local Government Board, the procedure must be under sect. 63 of the Act of 1888, and accordingly the Board or its arbitrator may be compelled to state a case for the opinion of the Court. The procedure under sect. 87 is only to be used when differences are to be settled by the Board otherwise than by arbitration.—*In re Kent County Council and Sandgate Local Board*, L.R. [1895] 2 Q.B. 43.
- (v.) **Q. B. D.—Building Line—Building "on either side" in same Street—Public Health Act, 1875, s. 8.**—In 1887 and 1889, R., the owner of adjoining plots on an estate laid out for building, built four semi-detached houses thereon, standing back sixty-two feet from the road. In 1894, L., who had acquired the adjoining plot, proposed to build a house thereon, standing back only twenty-five feet from the road. *Held*, that although R.'s houses were on "either side" of the proposed house, they were not "in the same street" within the meaning of the section.—*Reg. v. Fulwood Local Board*, 72 L.T. 592.

- (i.) **Q. B. D.**—*Nuisance—Offensive Trade—Notice to Abate—Public Health (London) Act, 1891, ss. 2, 4, 21.*—The notice to abate a nuisance required by sect. 4 does not apply to offensive trades, and the service of such notice is not a condition precedent to the jurisdiction of the magistrate to hear a complaint under sect. 21 of the Act.—*Bird v. St. Mary Abbott's Vestry*, L.R. [1895] 1 Q.B. 912; 72 L.T. 599.
- (ii.) **Q. B. D.**—*Parish Council—Election—Modes of Questioning—Demand for Poll—Local Government Act, 1894, ss. 48 (3), (5), 80 (1), Schedule 1, Part 1, r. 7; Schedule 1, Part 2, r. 1.*—The election for the first parish council may be questioned by an election petition, or by an application to the county council, but not by an application for a mandamus. Where at a parish meeting to elect parish councillors a poll is demanded by an unauthorized person, and the chairman has announced that a poll will take place, he is *functus officio*, and cannot declare the candidates elected at the meeting to be duly elected; and the candidates who are elected at the poll are the duly elected parish councillors.—*Reg. v. Mills*, 64 L.J. Q.B. 420; 72 L.T. 502; 43 W.R. 445.
- (iii.) **Q. B. D.**—*Public Health (London) Act, 1891, ss. 2, 4—Overcrowding—Liability.*—The superintendent of the philanthropic work of a religious association, owners of a building used at night as a refuge for destitute poor, but containing no sleeping accommodation, may in the event of the building becoming so overcrowded as to be injurious to health, be summoned as the person by whose act, default, or sufferance a nuisance has arisen.—*Reg. v. Mead*, 64 L.J. M.C. 169.
- (iv.) **Ch. D.**—*Sewer—"Made by any Person for his own Profit"—Public Health Act, 1875, s. 13.*—The plaintiffs laid out an estate for building, and constructed a sewer. When houses were built they charged a lump sum for permission to connect the drains with such sewer. They made a small profit thereby. *Held*, that the sewer was made only for the purposes of the particular estate, and was not made by the plaintiffs for their own profit within the meaning of the section, and did not, therefore, vest in the local authority.—*Voices v. Colmer*, 64 L.J. Ch. 414; 72 L.T. 889.
- (v.) **Q. B. D.**—*Sewers—"Single Private Drain"—Public Health Acts, 1848; 1875, ss. 4, 13, 15, 41; 1890, s. 19.*—Before 1848 a single brick drain on the respondent's premises conveyed the drainage of his house, and of other houses belonging to different owners, into an adjacent ditch. In 1853 the local authority substituted a sewer for the ditch, and the drain was connected with it. *Held*, that on the passing of the Act of 1848 the drain became a sewer vested in the local authority and repairable by them, and that it was not, therefore, a "single private drain" within the meaning of sect. 19 of the Act of 1890, and the local authority could not exercise the powers of sect. 41 of the Act of 1875.—*Hill v. Hair*, L.R. [1895] 1 Q.B. 906; 64 L.J. M.C. 164.
- (vi.) **Q. B. D.**—*Street—Paving—Liability of Frontager—Public Health Act, 1875, ss. 150, 152.*—So long as a street has not become repairable by the inhabitants at large under sect. 152, the local authority are not precluded from requiring the frontagers to level and pave the street under sect. 150, by reason only that, on a former occasion, the street was levelled and paved to their satisfaction, expressed or implied.—*Barry and Cadoxton Local Board v. Parry*, L.R. [1895] 2 Q.B. 110; 43 W.R. 504.

Lunatic:—

- (vii.) **C. A.**—*Record Transmitted to Ireland—Percentage paid in Ireland—Remittance to England—Lunacy Regulation (Ireland) Act, 1871, ss. 109, 114, 116—Lunacy Acts, 1890, ss. 107, 148, 149; 1891, s. 27 (2) (3).*—Where a transcript of the record of an inquisition has been transmitted

from England to Ireland, and percentage has been paid in Ireland upon the clear annual income of the lunatic, no further percentage is payable in England upon a sum ordered by the Lord Chancellor of Ireland to be remitted to England for the maintenance of the lunatic.—*In re Grehan*, L.R. [1895] 2 Ch. 12; 72 L.T. 383; 43 W.R. 433.

Machinery :—

- (i.) **Q. B. D.**—*Duty to Fence—Factory Acts*, 1878, s. 5; 1891, s. 6.—The words, "all dangerous parts of the machinery," in the later section apply to all machinery in the factory, and not only to such machinery as supplies or conveys the motive power to the machines by which the industrial operations of the factory are immediately effected.—*Redgrave v. Lloyds & Sons*, L.R. [1895] 1 Q.B. 876; 64 L.J. Q.B. 321; 72 L.T. 565; 43 W.R. 527.

Married Woman :—

- (ii.) **Q. B. D.**—*Separate Estate—Restraint—Defendant—Counter-claim—Costs—Married Women's Property Act*, 1893, s. 2.—Where a married woman, defendant in an action, makes a counter-claim, which is dismissed with costs, the Court may order the plaintiff's costs to be paid out of her separate estate as to which she is restrained from anticipation.—*Hood-Barrs v. Cathcart*, L.R. [1895] 1 Q.B. 873; 72 L.T. 427; 43 W.R. 560.
- (iii.) **Ch. D.**—*Will—Married Women's Property Act*, 1893, s. 3.—The will of a married woman dying after the Act, made during coverture and before the Act, and not re-executed or re-published after the death of her husband, passes all her estate, whether separate or not.—*Wylie v. Moffat*, L.R. [1895] 2 Ch. 116; 43 W.R. 475.
- See Bankruptcy*, p. 96.

Master and Servant :—

- (iv.) **Q. B. D.**—*Information Acquired in Service—Duty of Servant*.—The defendant being employed as manager in the plaintiff's business made a list of the customers, and, after leaving the plaintiff's service, used such list to solicit orders, having set up a similar business. *Held*, that he was liable in damages, it being an implied term of the contract of service, that he would not use, to the detriment of the plaintiff, information acquired in the course of his service.—*Robb v. Green*, L.R. [1895] 2 Q.B. 1.
- (v.) **C. A.**—*Liability of Master—Scope of Authority*.—Decision of Q. B. D. (*see* Vol. 20, p. 79, ii.) reversed.—*Gwilliam v. Twist*, L.R. [1895] 2 Q.B. 84; 72 L.T. 579.
- (vi.) **C. A.**—*Liability of Master for Assault by Servant*.—A master is liable for a wrongful assault committed by his servant in the course of, and in furtherance of, his employment; and an action will lie against the master, though the servant has been convicted and fined for the assault.—*Dyer v. Munday*, L.R. [1895] 1 Q.B. 742; 72 L.T. 448; 64 L.J. Q.B. 448; 43 W.R. 440.
- (vii.) **C. A. & Q. B. D.**—*Trade Union—Procuring Dismissal—Malice—Liability of Union for Act of Delegate*.—An action lies for maliciously, and with intent to injure the plaintiff, inducing his employers to dismiss him, even though such dismissal is not a breach of contract. Also for maliciously, and with intent to injure the plaintiff, inducing a third person not to enter into a contract with him. A delegate of a trade union is not the servant or agent of the union so as to render its members liable for his wrongful acts.—*Flood v. Jackson*, L.R. [1895] 2 Q.B. 21; 72 L.T. 589; 43 W.R. 453.

Metropolis Management:—

- (i.) **Q. B. D.**—*“Building Structure or Erection”*—*Metropolis Management Act, 1862, s. 75.*—The forecourt of a house was bounded on the side next the street by a wall about three feet high. The owner pulled down this wall and erected a wall eleven feet high, which was intended to be used for exhibiting advertisements, but was also the boundary wall of the forecourt. It was beyond the general building line, and was erected without the consent of the county council. *Held*, that the original wall was not a “building structure or erection” within the section mentioned, but that the new wall was, and that there was jurisdiction to order its demolition.—*Lavy v. London County Council*, L.R. [1895] Q.B. 915; 64 L.J. M.C. 196; 72 L.T. 600.
- (ii.) **Q. B. D.**—*Michael Angelo Taylor’s Act—Vestry—Compulsory Taking of Land—Jury—Costs.*—Where a vestry takes land by compulsion for the purpose of widening a street under the Act mentioned, and the owner’s compensation has been assessed by a jury, he is not entitled to be paid by the vestry his costs of the trial.—*Reg. v. London Justices*, L.R. [1895] 1 Q.B. 881; 64 L.J. M.C. 186; 72 L.T. 564.
- (iii.) **Q. B. D.**—*Rating—Sewers—Distress Warrant—Jurisdiction—Metropolis Management Acts, 1855, ss. 159, 161; 1862, ss. 52, 53.*—A police magistrate had issued a distress warrant for a special sewers rate made under the Act of 1855, for a special district in a parish. The rate had not been appealed against. *Held*, that he was right. The rate was good upon the face of it, and he had no power to entertain an objection that the expenses for which it was levied were recoverable only under the Act of 1862, in which case the property rated would have been exempted. Such a question could only be determined on an appeal to quarter sessions.—*Bates v. Plumstead Overseers*, 64 L.J. M.C. 127; 72 L.T. 393.

Mortgage:—

- (iv.) **C. A.**—*Colliery—Undertaking—Receiver—Company—Execution by—Seal.*—Where the mortgage of a colliery does not expressly include the undertaking and business, they are nevertheless included by implication; and there is jurisdiction to appoint a receiver and manager in case of default. When the seal of a company has been duly affixed to a mortgage deed by the secretary, the mortgagees need not go behind the articles of the company and ascertain whether the secretary was authorised to affix the seal by the private regulations of the directors, or whether the meeting at which the deed was sanctioned was attended by a quorum of directors.—*County of Gloucester Bank v. Rudry Merthyr Colliery Co.*, L.R. [1895] 1 Ch. 629; 64 L.J. Ch. 451; 72 L.T. 375; 43 W.R. 486.

Municipal Corporation:—

- (v.) **Q. B.**—*Action for Penalties—Procedure.*—An action under sect. 224 of the Municipal Corporations Act, 1862, to recover a fine from a person for acting in a corporate office without being qualified, is not a “proceeding” to which the Public Authorities Protection Act, 1893, applies, and therefore sect. 224 of the Act of 1862 is not repealed by the Act of 1893.—*Humphriss v. Worwood*, 64 L.J. Q.B. 437.

Nuisance:—

- (vi.) **C. A.**—*Easement—Discharge of Water—Negligence.*—The plaintiff was entitled to discharge his rain water into an open area belonging to the defendant. The defendant began to roof over the area, and a dispute arose about an obstruction in the plaintiff’s lights. An arrangement was made according to which the defendant made a flat roof over the

area, and the water pipes were altered so as to discharge on to the roof. The pipes from the roof became clogged, through no negligence of the defendant, and the water collected on the roof, and flowed into the plaintiff's house. *Held*, that the defendant was not liable, as the plaintiff had assented to the alteration, and there was no negligence. — *Gill v. Edouin*, 72 L.T. 579.

Partnership :—

- (i.) **Ch. D.—Interest of Deceased Partner in Assets—Purchase of Property by Railway Company.**—A partner died in April, 1891, after a railway company had given notice to take partnership property. A claim had been for a sum made of items for "leasehold interest," "plant," "goodwill" and "disturbance." The surviving partners accepted an offer of £19,000. It had been decided that the interest of the deceased partner should be ascertained as on March 31st, 1891, the partnership account being taken up to that day, and the value as of that day of the property taken by the company being included. The chief clerk apportioned the £19,000 between the items of claim other than that for disturbance. *Held*, that the amounts apportioned in respect of the leasehold interest and the plant must be brought into account, but not that apportioned in respect of goodwill.—*Hunter v. Dowling*, L.R. [1895] 2 Ch. 223.
- (ii.) **C. A.—Partner's Separate Debt—Changing Order upon Share in Partnership—Partnership Act, 1890, ss. 23, 31.**—In the absence of special circumstances a judgment creditor of a partner who has obtained an order charging the debtor's interest in the partnership is not entitled to demand from the other partners accounts of the partnership transactions.—*Brown, Janson & Co. v. Hutchinson & Co.*, L.R. [1895] 2 Q.B. 126; 43 W.R. 545.
- (iii.) **C. A.—Separate Debt of Partner—Execution—Foreign Firm—Office in England.**—Sect. 23 of the Partnership Act, 1890, which enables the judgment creditor of a partner to obtain a receiver of his interest in the partnership business, applies to a foreign firm having a branch house in England.—*Brown, Janson & Co. v. Hutchinson & Co.*, L.R. [1895] 1 Q.B. 737; 62 L.J. Q.B. 359; 72 L.T. 437; 43 W.R. 533.

Patent :—

- (iv.) **C. A.—Validity—Infringement—Revocation—Estoppel.**—In an action for infringement the Court held that one of the claims in the specification had been anticipated, and declared the patent invalid. The defendant petitioned for revocation of the patent. *Held*, that the plaintiff was not estopped from supporting the validity of the claim on the petition.—*In re Deeley's Patent*, L.R. [1895] 1 Ch. 687; 64 L.J. Ch. 480; 43 W.R. 517.

Poor Law :—

- (v.) **C. A. & Q. B. D.—Rating—Assessment—Public-House—Evidence as to Takings.**—On an appeal to quarter sessions against the assessment of a public-house, the assessment committee tendered evidence as to the average weekly takings. On objection taken the evidence was rejected. *Held*, that the rejection was right. All inquiries as to the profits of a business are to be rejected unless the rateable value can only be arrived at by those means. The proper test of the rateable value of a public-house is comparison with other houses of the same nature in the neighbourhood. — *Dodds v. South Shields Assessment Committee*, L.R. [1895] 2 Q.B. 133; 72 L.T. 355; 43 W.R. 532.

- (i.) **Q. B. D.**—*Rating—Land Clauses Act, 1845, s. 133—Deficiency in Rates—Compounding.*—Promoters took houses, the owners of which had compounded with the rating authority, being allowed a deduction of 25 per cent. *Held*, that the deficiency which the promoters were liable to make good must be computed on the full rateable value, and that they were not entitled to claim the deduction of 25 per cent.—*Vestry of St. Leonard's, Shoreditch v. London County Council*, L.R. [1895] 2 Q.B. 104.
- (ii.) **Q. B. D.**—*Settlement—Constructive Residence.*—A sailor left his wife for a voyage with the intention of returning to her. During his absence she changed her abode to another parish where he joined her on his return. *Held*, that in the absence of proof that the new abode was taken by his direction, he could not be treated as constructively resident there during the whole of his absence, and that the time between his wife's removal and his return could not be treated as part of a three years' residence so as to confer upon him a settlement.—*West Ham Union v. Cardiff Union*, L.R. [1895] 1 Q.B. 766; 64 L.J. M.C. 167; 62 L.T. 497; 43 W.R. 424.

Practice:—

- (iii.) **Q. B. D.**—*Appeal—Chambers—Judicature Act, 1894, s. 1, sub-s. 4.*—A summons for an interim injunction is a "matter of practice and procedure," and the appeal from the judge's order is to the Court of Appeal, and not to the Divisional Court.—*M'Hay v. Universal Stock Exchange*, L.R. [1895] 2 Q.B. 81; 72 L.T. 602; 43 W.R. 467.
- (iv.) **C. A.**—*Costs—Action of Tort—Railway Company—Passenger—Personal Injury.*—An action by a passenger against a railway company for personal injury caused by the negligence of the company's servants, while he was travelling on their line, is founded upon tort, whether the negligence charged is an omission to do some act which the servant should have done, or the commission of some act amounting to a misfeasance.—*Kelly v. Metropolitan Railway Co.*, L.R. [1895] 1 Q.B. 947; 72 L.T. 551; 43 W.R. 497.
- (v.) **C. A.**—*Discovery—Accounts of Rival Traders—R.S.C., 1883, O. xxxi., rr. 1, 12.*—When the parties to an action are rivals in trade, and interrogatories administered by one of them have been answered by the other to the satisfaction of the judge, an order for production of books of account will not be made if the judge considers that it would be vexatious and oppressive to compel production. An action was brought by the Attorney-General, at the relation of tramcar manufacturers, to restrain a tramway company from manufacturing and selling tramway cars with capital not authorised to be so applied. The Court allowed interrogatories as to what capital the defendants were employing in such manufacture, but refused to order production of their books of account for the purpose of showing whether their answers were true.—*Attorney-General v. North Metropolitan Tramways Co.*, 72 L.T. 340.
- (vi.) **Ch. D.**—*Interrogatories—Sufficiency of Answer—Agents—Executors.*—When a man is interrogated about acts done in the presence of persons employed by him, not only as servants, but as bankers or solicitors, their knowledge is his knowledge, and he is bound to inquire of them to enable him to answer. But the rule does not apply to an executor interrogated as to whether trust funds alleged to have been received by his testator had been paid by the latter to his bankers or solicitors twenty years before his death.—*Alliott v. Smith*, L.R. [1895] 2 Ch. 111.

- (i.) **C. A.**—*Evidence—Filing—R.S.C.*, 1883, O. xxxviii., rr. 10, 15.—It is the imperative duty of the solicitor of any party to any proceedings to cause every affidavit used in the proceedings to be filed.—*Taylor v. Gates*, 72 L.T. 736.
- (ii.) **Ch. D.**—*Foreclosure—Delivery of Possession—Ex parte Application*.—Where a foreclosure summons does not ask for delivery of possession, the subsequent order for foreclosure absolute and delivery of possession will not be made *ex parte*.—*Le Bas v. Grant*, 64 L.J. Ch. 368.
- (iii.) **C. A.**—*Libel—Justification—Particulars—Discovery—Inspection of Documents*.—Where justification is pleaded as a defence to an action of libel, and particulars are delivered of the matters on which the defendants rely, the effect of such delivery until some further order is made for further particulars is to narrow the matters in question to such particulars; and the defendants' right to discovery and inspection is limited to those matters which are relevant to the issue as so narrowed. When a party makes an affidavit of documents and desires to protect some of the contents from inspection, he must state on oath which parts do and which do not relate to the matters in question.—*Yorkshire Provident Life Assurance Co. v. Gilbert and Rivington*, L.R. [1895] 2 Q.B. 148; 72 L.T. 445.
- (iv.) **C. A. & Ch. D.**—*Mode of Trial—Partnership—Charges of Fraud—Jury*.—In an action for dissolution of partnership the defendant was charged with fraud, maintenance, and perjury. He selected some of these charges, and applied for an issue to be tried before a jury as to the truth of them. *Held*, that even if he was successful on such issue it would not necessarily follow that the partnership ought not to be dissolved, and that the application must be refused.—*Ehrmann v. Ehrmann*, 72 L.T. 352 & 548.
- (v.) **C. A.**—*Originating Summons—Order in Proceedings—Service out of Jurisdiction—R.S.C.*, 1883, O. xvi., r. 40; O. lv., r. 35.—There is no power to order service out of the jurisdiction upon a person not a party to the action of notice of an order made in proceedings commenced by originating summons. The person having conduct of the proceedings should give notice to the absent person of the proceedings, and then, if such person fails to appear, upon proof that such notice has been given, the Court will dispense with service upon him.—*Edwards v. Brown*, L.R. [1895] 2 Ch. 21; 64 L.J. Ch. 423; 72 L.T. 440; 43 W.R. 436.
- (vi.) **Q. B. D.**—*Petition—Liquidator of Company—Notice containing two Judgments*.—The liquidator of a company cannot present a bankruptcy petition on behalf of the company in his own name, though he may issue a bankruptcy notice in his own name on a judgment, making a sum payable to him. A bankruptcy notice is bad which calls upon a debtor to pay a sum due under a final judgment, and also the costs of an unsuccessful appeal against that judgment.—*E. p. Lewis; in re Bassett*, 43 W.R. 427.
- (vii.) **Ch. D.**—*Service out of Jurisdiction—Irregularity—Setting aside—R.S.C.*, 1883, O. xi., rr. 1, 4; O. ii., r. 5; O. lxx., r. 1.—A writ was issued and served upon a sole defendant who was within the jurisdiction. He applied for leave to serve D., out of the jurisdiction, with a third party notice. On the hearing of the application the judge ordered that D. should be made a defendant, and gave leave to amend the writ, and add D., and serve him out of the jurisdiction. No affidavit had been made that there was a good cause of action. The amended writ was

served on D., but it did not bear the indorsement according to Form 5, Appendix A. *Held*, that the omissions were irregularities only, and did not entitle D. to have the writ and service set aside.—*Dickson v. Law*, L.R. [1895] 2 Ch. 62; 64 L.J. Ch. 490.

- (i.) **C. A.**—*Service out of Jurisdiction—Application to set aside Order.*—An application by a defendant to set aside an *ex parte* order of the judge at chambers, giving leave to serve a writ out of the jurisdiction, must now be made at chambers, and not by motion either in the Divisional Court or in the Court of Appeal.—*Black v. Dawson*, L.R. [1895] 1 Q.B. 848; 64 L.J. Q.B. 464; 72 L.T. 525; 43 W.R. 485.

Principal and Agent:—

- (ii.) **H. L.**—*Authority to Pledge Deeds—Authority Exceeded—Right of Pledge.*—Decision of C. A. (*see* Vol. 19, p. 20, v.) affirmed.—*Brocklesby v. Temperance Permanent Benefit Building Society*, L.R. [1895] A.C. 173; 64 L.J. Ch. 433; 72 L.T. 477.

Principal and Surety:—

- (iii.) **C. A.**—*Insurance of Securities—Agreement to Repay Sums Paid under Policy—Scheme of Arrangement—Liability.*—Payment of the principal and interest of certain five per cent. debentures issued by the M. company was insured by the plaintiffs. The defendants agreed to repay moneys paid by the plaintiffs under the policy. The M. company having made default, and the principal and interest having thereby become due, a scheme of arrangement was sanctioned which extended the time for payment by the plaintiffs, and reduced the interest. The plaintiffs made payments under the scheme. *Held*, that the defendants were not liable to repay the same, as they were not payments made under the policy.—*Mortgage Insurance Corporation v. Pound*, 64 L.J. Q.B. 394.

Railway:—

- (iv.) **Railway and Canal Commission Court.**—*Facilities for Passenger Traffic—Water-closets at Stations.*—A railway company made a charge for the use of water-closets at a station. *Held*, that there was no jurisdiction to order the company to desist from making such charge, as the same did not amount to a denial of reasonable facilities for passenger traffic.—*West Ham Corporation v. G.E.R.*, 64 L.J. Q.B. 340; 72 L.T. 395.
- (v.) **Railway and Canal Commission.**—*Undue Preference—Home and Foreign Merchandise—Railway and Canal Traffic Act, 1888, s. 27.*—The effect of the proviso at the end of sub-sect. 2 is not to prohibit all inequalities of rates as between home and foreign merchandise, but that if the company have proved facts which would justify admitted differences, had the goods in both cases been home goods, they are not debarred from relying on these facts as an answer, merely because the goods which receive the benefit of the difference are foreign.—*Mansion House Association v. L. & S.W.R.*, L.R. [1895] 1 Q.B. 927; 72 L.T. 507.
- (vi.) **C. A.**—*Practice—Association of Traders—Complaint against Increase of Rates—Particulars—Railway and Canal Traffic Acts, 1888, s. 7; 1894, s. 1, sub-ss. 1-4, s. 2—Costs.*—Decision of Railway and Canal Commission Court (*see* Vol. 20, p. 86, i.) affirmed. The Court of Appeal can give costs of an appeal from the Railway and Canal Commission Court.—*Mansion House Association v. G.W.R.*, L.R. [1895] 2 Q.B. 141; 64 L.J. Q.B. 434; 72 L.T. 523.

- (i.) **Ch. D.—Receiver and Manager—Expenses of Promoting Bill.**—The Court refused in the absence of the consent of all parties to give leave to the receiver and manager of a railway company to apply money out of the assets in his hands in promoting a Bill in Parliament which sought to vary the mode of working the railway.—*In re The Mersey Railway Co.*, 72 L.T. 535.
- (ii.) **Ch. D.—Severed Land—Level Crossing—Severance of Ownership—Railways Clauses Act, 1845, s. 68.**—A railway company made a level crossing as a communication between two parts of the land of R. which had been severed by the railway. R. granted the land on one side to P., and the land on the other side to the predecessor of G. P. released his right to use the crossing. *Held*, that the company were entitled to restrain G. from removing a fence which they put up obstructing the crossing, but without prejudice to the right of G. in case he should be entitled as against the owners or occupiers of the other part of the severed land, to pass over or use such land in connection with his own land.—*M.R. v. Gribble*, L.R. [1895] 2 Ch. 129.

Registration :—

- (iii.) **Q. B. D.—Burgess—Continuous Occupation—Municipal Corporations Act, 1882, s. 9.**—J., the occupier of premises, transferred them to a company, and on the same day took a demise of part of the premises, which he continued to occupy. *Held*, that there had been no breach in his occupation of that part sufficient to disentitle him to be enrolled as a burgess.—*Timmis v. Albiston*, L.R. [1895] 2 Q.B. 58.

Revenue :—

- (iv.) **C. A.—Income Tax—Exemption—Literary or Scientific Institutions—Public Library—Public Libraries Act, 1892—Income Tax Act, 1842, s. 61, r. 6.**—A building appropriated as a public library under the Act of 1892 is not exempted from income tax as a "building the property of any literary or scientific institution," so as to relieve a municipal corporation, which is also the library authority for its district, from paying income tax under schedule A.—*Mayor of Manchester v. McAdam*, L.R. [1895] 1 Q.B. 673 ; 64 L.J. Q.B. 401 ; 72 L.T. 349 ; 43 W.R. 438.
- (v.) **Q. B. D.—Inhabited House Duty—Training-Stables—48 Geo. III., c. 55, Sched. B., r. 2—Customs and Act, 1878, s. 13, sub-s. 2.**—The appellant was assessed upon premises occupied by him as a trainer of race-horses. They consisted of a lodge, in which the head stable-lad lived, and three ranges of stables, over part of which were rooms used by the stable-boys as sleeping-rooms. *Held*, that the stables "belonged to and were occupied with the lodge," and that the assessment was right.—*Lambton v. Kerr*, 43 W.R. 541.
- (vi.) **Ch. D.—Income Tax—Annuity—Right to Deduct.**—The trustees of a deed of arrangement, made pursuant to an order of the Divorce Court, by which an annuity was secured to a wife who had obtained a divorce, may deduct income tax, but cannot recover income tax which they have neglected to deduct in the past.—*Warren v. Warren*, 43 W.R. 490.

Sale of Goods :—

- (vii.) **Ch. D.—Lien—Delivery—Sale of Goods Act, 1893, s. 25.**—Where warehoused goods have been sold but the purchaser has not taken possession, a subsequent document purporting to give the warehousemen a lien for sums due from the vendor is not binding on the purchaser.—*Nicholson v. Harper*, 43 W.R. 550.
- viii.) **C. A.—Memorandum in Writing—Acceptance.**—Decision of Q. B. D. (see Vol. 20, p. 87, v.) reversed.—*Abbott v. Wolsey*, L.R. [1895] 2 Q.B. 97 ; 72 L.T. 581 ; 43 W.R. 513.

Scotch Law :—

- (i.) **H. L.**—*Universities (Scotland) Act, 1889, ss. 14, 15, 16, 19, 20—Affiliation of Colleges.*—The Commissioners mentioned in the Act cannot affiliate the college mentioned in sect. 16, except by an ordinance published, laid before Parliament, and approved as directed in the Act.—*Metcalfe v. Cox*, 72 L.T. 511.

Settlement :—

- (ii.) **C. A. & Ch. D.**—*Voluntary—Rectification—Evidence.*—The Court is not disposed to rectify a voluntary settlement where the evidence of the settlor's intentions consists only of his own statement, unsupported by any written instructions or the like, although the proposed rectification would make the settlement more in accordance with precedent. In such a case the Court will not in general dispense with oral evidence.—*Bonhote v. Henderson*, L.R. [1895] 1 Ch. 742, 2 Ch. 202; 72 L.T. 556; 43 W.R. 502.

Ship :—

- (iii.) **P. D.**—*Collision—"Fairway" of River.*—The fairway of a river is not necessarily confined to that part of the channel which is marked by buoys, but includes that part inshore of the buoys which is navigable for vessels of moderate draught.—*The Blue Bell*, L.R. [1895] P. 242; 72 L.T. 540.
- (iv.) **C. A.**—*Collision—Lights—Unmanageable.*—A steamship which is riding by her chains with anchors unshackled, should exhibit three red lights, and keep steam readily available so as to bring herself under command when necessary.—*The Faedrelandet*, L.R. [1895] P. 205.
- (v.) **C. A.**—*Collision—Limitation of Liability—Yacht Racing Rules.*—The defendant entered his yacht for a race, and assented in writing to certain rules which provided that the owners of competing yachts should be liable for all damages caused by infringement of the rules. The defendant's yacht infringed the rules, and so collided with, and sank another yacht. *Held*, that the rules created a contract between the competitors, and that the word "all" prevented the defendant's liability from being limited.—*The Satanita*, L.R. [1895] P. 248; 72 L.T. 316; 43 W.R. 498.
- (vi.) **P. D.**—*Harbour Authority—Liability of—Unsafe Berth.*—A port and harbour authority with rights to receive tolls to be applied in improving the harbour and port, and with parliamentary powers to appoint harbour-masters, *held*, to be liable for damage done to a ship berthed under the direction of the harbour-master, owing to the neglected state of the bottom.—*The Burlington*, 72 L.T. 602.
- (vii.) **C. A.**—*Insurance—Freight—"Cancelling of Charter"—Delay.*—Decision of Q. B. D. (*see* Vol. 20, p. 89, vi.) reversed.—*Jamieson v. Newcastle Steamship Freight Insurance Association*, L.R. [1895] 1 Q.B. 90; 43 W.R. 580.
- (viii.) **Q. B. D.**—*Insurance—Hull and Machinery—Warranted Uninsured—Honour Policies—Disbursements.*—The plaintiff effected a time policy on hull and machinery of a ship valued at £10,000. The policy contained a proviso, "£5,000 warranted uninsured." He insured hull and machinery for £5,000 in all, and effected, by means of "honour policies," insurances on "disbursements" for a further sum. The ship was lost within the insured time. *Held*, that the "honour policies," though void at law, were effective to infringe the warranty mentioned, but that being on "disbursements" they did not affect the subject-matter of the policy on "hull and machinery," and consequently did not infringe the warranty.—*Roddick v. Indemnity Mutual Marine Insurance Co.*, L.R. [1895] 1 Q.B. 836; 64 L.J. Q.B. 423.

- (i.) **Ch. D.—Mortgage—Priority—Notice—Merchant Shipping Acts, 1854, ss. 43, 66, 67, 69; 1862, s. 3.**—A statutory registered mortgage of a ship has priority over a prior unregistered mortgage of which the mortgagee had notice. An intending mortgagee had notice that the shipowners, a company, had issued debentures, but not that the debentures affected the ship. *Held*, that he had not constructive notice of the debenture-holder's title.—*Black v. Williams*, L.R. [1895] 1 Ch. 408; 64 L.J. Ch. 137; 43 W.R. 846.
- (ii.) **P. D.—Salvage—Agreement to Perform—Failure—Remuneration.**—The plaintiffs in a salvage action agreed to tow the ship to a place of safety. They failed to do so, but left her in a position somewhat better than that in which they picked her up. She was salvaged ultimately by other salvors. *Held*, that they had rendered some beneficial services which had contributed to her safety, and were entitled to remuneration.—*The Hestia*, L.R. [1895] P. 193; 72 L.T. 364.
- (iii.) **Q. B. D.—Pilot—Qualified—Exempted Ship.**—A pilot, holding a licence under the provision of the Order in Council of February, 1873, entitling him "to act as a pilot for the purpose of conducting exempted ships and no others," is not in relation to other ships to be deemed "a qualified pilot" within the Merchant Shipping Act, 1858, sect. 358.—*Stafford v. Dyer*, 64 L.J. M.C. 194.
- (iv.) **Q. B. D.—Seaman—Contract of Service—Increased Danger—Uncompleted Voyage—Wages.**—The Japanese Government purchased a ship in England, which they placed in charge of a master to be taken out. The plaintiff contracted with the master to serve for the voyage at a fixed sum. On the way out war was declared against China, and the plaintiff refused to continue to serve. *Held*, that the master was responsible to the plaintiff for the act of his principals in declaring war, and that as the voyage was thereby made more dangerous the plaintiff was justified in refusing to continue, and was entitled to his agreed wages though the voyage was not completed.—*O'Neil v. Armstrong, Mitchell & Co.*, L.R. [1895] 2 Q.B. 70; 43 W.R. 554.

Solicitor:—

- (v.) **C. A. & Ch. D.—Costs—Sale to Local Board—Solicitors Remuneration Act, 1881—General Order, Sched. 1, part 1, r 11; Sched. 2.**—A sale to a local board for the purpose of making sewage works under the Public Health Act, 1875, although made by a voluntary agreement, is a sale under the Lands Clauses Act, and therefore the vendor's costs are to be taxed under Sched. 2 of the General Order, and not under the scale provided in Sched. 1, part 1.—*In re Burdekin & Co.*, L.R. [1895] 2 Ch. 186; 72 L.T. 417; 43 W.R. 584.
- (vi.) **Ch. D.—Costs—Security for—Charging Order—Solicitors Act, 1860, s. 28.**—The Court will not make a charging order for costs where the solicitor has already accepted security for them.—*Groom v. Chesswright*, L.R. [1895] 1 Ch. 730; 64 L.J. Ch. 406; 72 L.T. 555; 43 W.R. 475.
- (vii.) **Ch. D.—Default in Payment—Attachment—Debtors Act, 1869, s. 4, sub-s. 4.**—An order for taxation of a bill which had been paid directed that the amount overpaid (if any) should be repaid within four days. The taxing-master found that the bill had been overpaid. By a subsequent order it was directed that the solicitor should pay the costs of taxation. *Held*, that both the amount found due on taxation and the costs of taxation, were due from the solicitor "in his character of an officer of the Court," and that he could be attached for default.—*In re A Solicitor*, L.R. [1895] 2 Ch. 66; 43 W.R. 490.

Specific Performance:—

- (i.) **C. A.—Agreement for Lease—Two Defendants—One an Infant.**—The defendants, an infant and his sister, agreed by their agent to grant a lease to the plaintiff. In an action for specific performance, and for an interim injunction to restrain the defendants from leasing the premises to any other person: *Held*, that the injunction ought not to be granted unless there was a right to specific performance; that as one defendant was an infant there was no right to specific performance against both, nor against the sister as to her interest in the absence of any proof of misrepresentation or misconduct on her part.—*Lumley v. Ravenscroft*, L.R. [1895] 1 Q.B. 682; 64 L.J. Q.B. 441; 72 L.T. 382.
- (ii.) **Ch. D.—Contract—Statute of Frauds—Several Documents—Parol Evidence.**—In an action for specific performance several letters were relied on by the purchaser as forming a sufficient memorandum in writing signed by the vendor's agent. The last letter contained all the necessary terms except the price, which was specified in a previous letter. *Held*, that parol evidence could not be admitted to connect the documents, and there being nothing in the last letter to shew that the previous letters were referred to, there was no sufficient memorandum in writing.—*Potter v. Peters*, 64 L.J. Ch. 357.
- (iii.) **Ch. D.—Statute of Frauds.**—By a letter containing all the essential terms of a contract the defendant offered to take a lease, the letter containing the provision "such lease to be approved in the customary way by my solicitor." The offer was accepted. The defendant's solicitor refused to approve the lease, or to complete. *Held*, that there was a binding agreement, the provision meaning only that the solicitor was to see that there was nothing improper or unusual in the lease.—*Chipperfield v. Carter*, 72 Q.T. 487.
- (iv.) **Ch. D.—Material Fact—Non-disclosure.**—In the absence of a duty on the part of the plaintiff to disclose material facts within his knowledge, the non-disclosure of a material fact to the defendant, who enters into a contract in ignorance thereof, is not of itself a good defence to an action for specific performance.—*Turner v. Green*, L.R. [1895] 2 Ch. 205; 43 W.R. 587.

Tenant for Life:—

- (v.) **Ch. D.—Trust for Sale—Power to Postpone—Business—Profits of Capital or Income.**—A testator devised and bequeathed his real and personal estate, which included a business, upon trusts for conversion, the proceeds to be held on trust for his wife for life. There was a power to postpone the conversion, the income until sale to be paid in the same manner as the income of the trust estate. The trustees carried on the business for twenty years, not with a view to a sale, but for the benefit of the widow, to whom they paid the profits. *Held*, that they were justified in carrying on the business, and in so applying the profits.—*Midgley v. Crowther*, L.R. [1895] 2 Ch. 56.

Thames Conservancy:—

- (vi.) **Q. B. D.—Election—Proxies—Body Corporate—Returning Officer—Judicial Act—Thames Conservancy Act, 1894, ss. 22, 23, 25.**—The only way in which a body corporate can exercise its right of voting by proxy at an election of Thames Conservators, is by a shareholder or officer. But where the returning officer wrongfully received proxies given to persons not shareholders or officers, *held*, that he had acted judicially, and that the return was conclusive; and also, that wrongful reception was an "error or irregularity" which did not invalidate the election.—*Reg. v. Samuel*, L.R. [1895] 1 Q.B. 815; 72 L.T. 572.

Tithes :—

- (i.) **Q. B. D.**—*Assessment of Lands—Reduction by Commissioners for Income Tax—Appeal by Owner of Rent-Charge—Tithe Act, 1891, s. 8, sub-ss. 1, 3.*—Where the Income Tax Commissioners have reduced the assessment of lands for the purpose of Schedule B, so that the tithe rent-charge exceeds two-thirds of the annual value, whereby so much of the rent-charge as is equal to the excess is liable to be remitted, the owner of the rent-charge is entitled to appeal.—*Reg. v. Barnstaple Commissioners of Taxes*, L.R. [1895] 2 Q.B. 123.

Trade Libel :—

- (ii.) **C. A.**—*Trade Union—Intimidation—Injunction.*—In consequence of a trade dispute with reference to an alleged preference given by a building firm to non-union men, a trade union published a poster headed "Trollope's Black List," containing the names of non-union men employed by the firm. *Held*, that the trade-union were doing more than was necessary for their own protection, and that an interlocutory injunction must be granted.—*Trollope & Sons v. London Building Trades Federation*, 72 L.T. 342.

Trade Mark :—

- (iii.) **C. A.**—*Invented Word.*—Decision of Ch. D. (*see* Vol. 20, p. 91, iii.) affirmed.—*In re Densham's Trade Mark*, L.R. [1895] 1 Ch. 176; 43 W.R. 515.

Tramway :—

- (iv.) **C. A.**—*Debenture—Sale—Receiver—Tramways Act, 1870, s. 44.*—The right of the holder of a charge to have a judicial sale of the property charged does not extend to an undertaking which has been acquired under statutory powers for public purposes where such purposes would be seriously affected by a sale. Debenture holders of a tramway are not "promoters," and cannot exercise the powers conferred on the promoters. The section mentioned does not enable a tramway company to give a power of sale over the undertaking. The Court ought not to appoint receivers and managers of such an undertaking, but only of the earnings.—*Marshall v. South Staffordshire Tramways Co.*, L.R. [1895] 2 Ch. 36; 72 L.T. 542; 64 L.J. Ch. 481; 43 W.R. 469.
- (v.) **Ch. D.**—*Purchase—Tramways Act, 1870, s. 43.*—A local authority has the right to purchase a tramway within its district twenty-one years after its special Act, although it has, by subsequent Acts, been incorporated into a common undertaking with other tramways as to which such right of purchase has not arisen, or which may not be within the district, and although such purchase may disconnect the general system of the owners of the tramway.—*North Metropolitan Tramway Co. v. London County Council*, 72 L.T. 586; 43 W.R. 552.

Trustee :—

- (vi.) **Ch. D.**—*Breach of Trust—Request of Beneficiary—Impounding of Interest—Removal of Restraint.*—Where a trustee has committed a breach of trust at the instigation of a beneficiary, his equity to have the interest of such beneficiary impounded is the same as it was before the Trustee Acts, 1888 and 1893. Those Acts have enlarged the discretion of the Court. The refusal of the trustee to take a mortgage of a beneficiary's interest as an additional security for an improper investment is not a waiver of his equity as regards such beneficiary's interest. The Court refused to remove a restraint on alienation of the interest of a married woman who had requested the trustee to commit

a breach of trust, so as to give effect to the trustee's equity, where she did not know, and was not told by the trustee, that the transaction was a breach of trust.—*Bolton v. Curre*, 48 W.R. 521.

- (i.) **Ch. D.**—*Breach of Trust—Solicitor Party to—Trustee Acts, 1888, ss. 6, 8; 1893, s. 45.*—The trustees of a settlement had power to vary securities on the request of the wife. It was proposed to appoint new trustees, and one of the old trustees took the securities representing the trust funds, and paid the money to a bank in the names of himself and one of the new trustees. The moneys came into the hands of a solicitor who was acting for the husband and wife and the new trustees, and he advanced them on mortgages which were not proper securities. The new trustees were then appointed by a deed which referred to the mortgages as being the trust funds. The wife did not know that the investment was a breach of trust. *Held*, that the solicitor was liable, as if he had been actually a trustee, to make good the loss caused by the breach of trust; and that his partners were also liable, as it appeared that he had acted on behalf of his firm. *Held*, also that the wife's income could not be impounded for their indemnity.—*Mara v. Browne*, L.R. [1895] 2 Ch. 69.
- (ii.) **C. A.**—*Costs—Administration Action.*—A summons was taken out by a beneficiary for administration of an estate. Several questions arose as to the trustee's accounts and his management of the estate, and the judge made an order directing accounts and declaring that "he did not think fit to make any order as to the costs of the action." *Held*, that this was a judicial decision that the trustee was not entitled to his costs, and that he had no right to retain them.—*Hodgkinson v. Hodgkinson*, L.R. [1895] 2 Ch. 190.
- (iii.) **C. A.**—*Incumbrance—Priority—Stop Order—Notice to Trustee—Ward of Court—Post-Nuptial Settlement—Consideration.*—A stop order obtained in an action for the administration of an estate has no greater effect as regards priority than notice to the trustees of the estate could have had if there had been no action. Where a beneficiary under a settlement settles his interest the assignees of a beneficiary under the second settlement should give notice to the trustees of that settlement, and not to those of the original settlement, though the latter have the actual control of the fund. A ward of court married without consent and executed a post-nuptial settlement. *Held*, that a covenant by her therein contained to settle after-acquired property was not voluntary, but founded upon valuable consideration, and might be enforced by the trustees.—*Stephens v. Green; Green v. Knight*, L.R. [1895] 2 Ch. 148; 72 L.T. 574; 48 W.R. 465.
- (iv.) **C. A.**—*Reversionary Legatee—Right to Information—Costs.*—The plaintiff, being entitled under a will to the sum of £100 subject to a life interest, was desirous of obtaining a loan on the security of his interest, and asked the trustees for particulars of the securities in which the estate was invested. The trustees stated the amount of the estate, which was amply sufficient, and gave general information as to the investments. The plaintiff took out a summons for full particulars of the investments. *Held*, that he was entitled to the particulars, but as unreasonable haste had been shewn, no order was made as to costs, except that the plaintiff's solicitor should be disallowed his costs.—*Sawyer v. Goddard*, 72 L.T. 404.
- (v.) **Ch. D.**—*Vesting Order—Mortgagee—Disputed Will—Trustee Act, 1893, s. 29 (e).*—Where a surviving mortgagee has died leaving a will whereby executors are appointed, but the validity of the will is dis-

puted, and litigation is pending, it is "uncertain who is the personal representative," and the mortgagor is entitled to a vesting order.—*In re Cook's Mortgage*, L.R. [1895] 1 Ch. 700; 72 L.T. 388; 43 W.R. 461.

Vendor and Purchaser:—

- (i.) **C. A. & Ch. D.—Condition Restrictive of Title—Summons—Declaration of Title—Action of Review.**—A condition of sale of a leasehold house, provided that no objection should be made in respect of the title between the original lease and the assignment. *Held*, that this threw upon the purchaser the burden of proving a defective title, and that he could not be relieved of his contract merely upon showing that the title was doubtful or open to suspicion. *Semble*, that a purchaser who can obtain the legal estate cannot evade his contract on the ground that he cannot get a complete string of covenants for title. Where a good title has been declared on a summons, the purchaser may re-open the question by an action of review, but only if he has discovered, since the order on the summons, material facts showing the title to be defective, which he could not with reasonable diligence have discovered earlier. The action of review may be brought by way of counter-claim if the vendor is suing for specific performance.—*Scott v. Alvarez*, L.R. [1895] 1 Ch. 596; 64 L.J. Ch. 376; 72 L.T. 455.
- (ii.) **Ch. D.—Land Sold Subject to Incumbrance—Conveyancing Act, 1881, s. 5.**—Where land has been sold subject to an incumbrance the Court has jurisdiction to discharge the same, even though for that purpose it must decide as to future interests therein.—*Freem v. Hall*, L.R. [1895] 2 Ch. 256; 72 L.T. 486; 43 W.R. 473.
- (iii.) **Ch. D.—Undischarged Bankrupt—After-acquired Property.**—An undischarged bankrupt acquired premises under leases for terms of years and subject to onerous covenants, and subsequently demised them by way of mortgage, without any intervention by the trustee. A purchaser from the mortgagee objected to the title. *Held*, that until the trustee intervened the bankrupt could deal with his after-acquired leaseholds, and that the purchaser must accept the title.—*In re Clayton and Barclay's Contract*, L.R. [1895] 2 Ch. 212; 43 W.R. 549.

Waterman:—

- (iv.) **Q. B. D.—River Thames—Watermen's and Lightermen's Amendment Act, 1859, Qualification.**—A person who is duly bound apprentice to a freeman of the Watermen's Company, or to a registered barge owner, in pursuance of the Act, is from the commencement of his apprenticeship a qualified apprentice within sect. 54, and entitled as such to act as assistant lighterman within the limits of the Act, and is also a sufficient second hand to assist in the navigation of a craft of above fifty tons burden to satisfy Bye-law 16 of the Thames Conservancy Bye-Laws, 1872.—*Gosling v. Newton*, L.R. [1895] 1 Q.B. 723; 64 L.J. Q.B. 362; 72 L.T. 500; 43 W.R. 559.

Weights and Measures:—

- (v.) **Q. B. D.—Bye-Law of Local Authority—Sale of Coal—Weights and Measures Act, 1889, s. 28.**—A bye-law of a county council requiring a weighing machine to be carried with any vehicle carrying coal for sale, and requiring the person conveying the coal to "reweigh" the same if requested, *held*, to be warranted by the Act, and valid.—*Kent County Council v. Humphrey*, L.R. [1895] 1 Q.B. 908; 64 L.J. M.C. 190; 72 L.T. 563; 43 W.R. 506.

Will:—

- (i.) **H. L.**—*Accumulations—Vested Interest—Payable in Future—Charity.*—A testator bequeathed his residue upon trust out of the annual income to pay annuities. When the income was insufficient there was to be an abatement. The surplus income (if any) was to be invested, and after the death of the surviving annuitant the residue was to be divided among certain charities. *Held*, that the charities were entitled to receive the surplus income at the end of each year.—*Wharton v. Masterman*, L.R. [1895] A.C. 186; 64 L.J. Ch. 369; 72 L.T. 431; 43 W.R. 449.
- (ii.) **Ch. D.**—*Life Interest—Forfeiture.*—H. was entitled under a will to a life interest in remainder subject to a proviso for cesser if he should do or suffer any act or thing whereby he should be deprived or be liable to be deprived of the beneficial enjoyment thereof. He committed an act of bankruptcy, and a petition was presented. The tenant for life died, and the petition was afterwards dismissed. *Held*, that his life interest was forfeited.—*Otray v. Otray*, L.R. [1895] 2 Ch. 235; 43 W.R. 501.
- (iii.) **C. A.**—*Construction—General Restraint of Marriage.*—Decision of Ch. D. (see Vol. 20, p. 93, iii.) affirmed.—*Morley v. Rennoldson*, 64 L.J. Ch. 485; 43 W.R. 518.
- (iv.) **C. A.**—*Construction—Gift per Stirpes or per Capita.*—Testator gave real and personal estate to his wife for life, and directed that after her death it should be divided between his brother and sisters therein named, "at the decease of either of my before-named brother or sisters their interest herein to be equally divided amongst their children, and after the decease of all" he directed conversion and division amongst "the children of the aforesaid, share and share alike." *Held*, that the ultimate gift was a clear gift *per capita*.—*Baker v. Stone*, L.R. [1895] 2 Ch. 196.
- (v.) **Ch. D.**—*Codicil—Annuity—Revocation.*—Testator gave A. an annuity of £300 to be charged on certain lands, and directed that after her death the said sum of £300 should be raised and paid to her children as she should appoint, and in default of appointment, equally. By codicil he revoked the annuity of £300, and "instead thereof" gave A. an annuity of £150 payable and chargeable in the same manner as the annuity given by the will. The children of A. were not mentioned in the codicil. *Held*, that the annuity of £150 was payable to the children of A.—*In re Freme's Contract*, L.R. [1895] 2 Ch. 256.
- (vi.) **Ch. D.**—*Construction—Legacy to Charity Cy-près.*—Testatrix had promised to subscribe a certain sum to a committee for establishing a bishopric. She bequeathed to the committee a legacy of the amount of her promised subscription. After her death the particular scheme was given up, but the committee existed, and the intention of establishing a bishopric remained. *Held*, that this was a good charitable legacy for a purpose which had not failed, and that the money must be paid to approved members of the committee with an undertaking to apply it to the proper purposes, and in case they failed to return it for application *cy-près*.—*Bower v. Goodman*, 72 L.T. 323.
- (vii.) **P. D.**—*Probate—Codicils—Implied Revocation.*—By a first codicil the testator made provision for his wife, gave directions as to his burial, and gave legacies. On the death of his wife he altered the draft of the first codicil so as to make a second. The second codicil did not refer to the first and was a repetition thereof except that it contained dispositions consequent on the wife's death, and that one legacy was

increased after it was engrossed. There was no external evidence of intention. *Held*, that the second codicil only was entitled to probate.—*Chichester v. Quatrefages*, L.R. [1895] P. 186; 72 L.T. 475.

- (i.) **P. C.—Probate—Verdict against Weight of Evidence.**—In a suit to revoke probate the jury found that the testator was of unsound mind at the date of execution. *Held*, that the verdict must be set aside as being against the weight of evidence; the medical evidence being insufficient to support it, while the other evidence of incapacity related to irrelevant circumstances, and was contradicted by witnesses who deposed to actual dealings with the testator, and to his conduct and condition at the time of executing the will.—*Aitken v. McMeckan*, L.R. [1895] A.C. 310.
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CONTENTS:

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- II.—THE HIGH COURTS AND THE COLLECTOR-MAGISTRATES IN INDIA. By JOHN DACOSTA.
- III.—EXTERRITORIALITY, AND THE JURIDICAL POSITION IN ENGLAND OF FOREIGN SOVEREIGNS AND AMBASSADORS. By W. F. CRAIGS, Barrister-at-Law.
- IV.—THE FUNCTION OF EVIDENCE IN ROMAN LAW: IV. By JAMES WILLIAMS, D.C.L., Fellow of Lincoln College, Oxford.
- V.—CURRENT NOTES ON INTERNATIONAL LAW. By J. M. GOVER, LL.D., Barrister-at-Law.
- VI.—QUARTERLY NOTES.
- VII.—REVIEWS.
- VIII.—QUARTERLY DIGEST OF ALL REPORTED CASES. By C. H. LOMAX, M.A., Barrister-at-Law.
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CONTENTS:

- I.—INDIA, AS IT IS, AND AS IT MIGHT BE. By RIGHT HON. SIR RICHARD GARTH, M.A., Q.C., Late Chief Justice of Bengal.
- II.—THE GOVERNMENT OF INDIA, AND ITS REFORM THROUGH PARLIAMENTARY INSTITUTIONS. By JOHN DACOSTA.
- III.—THE MATRIMONIAL CAUSES ACTS, AND ACCESS TO CHILDREN BY DIVORCED PARENTS. By C. B.
- IV.—STATE LABORATORIES, AND THE FOOD PRODUCTS (ADULTERATION) COMMITTEE. By F. H. CRIPPS-DAY, M.A., Barrister-at-Law.
- V.—FOREIGN MARITIME LAWS: V. PORTUGAL. By F. W. RAIKES, LL.D., Q.C.
- VI.—CURRENT NOTES ON INTERNATIONAL LAW. By J. M. GOVER, LL.D., Barrister-at-Law.
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